

No. C061011

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al.,
Plaintiffs and Appellants,

v.

JOHN CHIANG, as State Controller, etc.,
Defendant and Appellant;

ARNOLD SCHWARZENEGGER, as Governor, etc., et al.,
Defendants and Respondents.

FILED

On Appeal of an Order and Judgment
by the Sacramento County Superior Court,
Case No. 34-2008-80000126-CU-WM-GDS,
The Honorable Patrick Marlette

SEP - 1 2009

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT
BY  Deputy

JOINT APPENDIX
VOLUME III OF IV [PAGES 476 THROUGH 678]

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G	1/6/09	Declaration of Theodore Toppin, Exh. D: Dec. 1, 2008 Prop. 58 Special Session Proclamation	Vol. I, JA 70
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R	1/9/09	Request for Judicial Notice, Exh. E: Dec. 23, 2008 Unfair Practice Charge filed by American Physicians and Dentists	Vol. II, JA 415
S	1/9/09	Request for Judicial Notice, Exh. F: Dec. 30, 2008 Unfair Practice Charge filed by AFSCME	Vol II, JA 419
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S	1/9/09	Request for Judicial Notice, Exh. F: Dec. 30, 2008 Unfair Practice Charge filed by AFSCME	Vol. II, JA 419

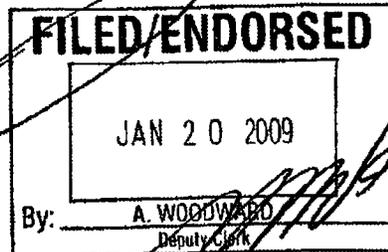
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14 ADMINISTRATION



Exempted from Fees
(Gov. Code § 6103)

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SACRAMENTO

17
18 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
19 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

20 Petitioners/Plaintiffs,

21 v.

22 ARNOLD SCHWARZENEGGER, Governor;
23 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
24 STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

25 Respondents/Defendants

26 AND RELATED CASES
27

CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

DECLARATION OF DAVID W. TYRA IN
SUPPORT OF OPPOSITION TO MERITS OF
PETITIONERS' PETITIONS FOR WRIT OF
MANDATE

Date: January 29, 2009

Time: 9:00 a.m.

Dept.: 19

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11. Attached to this declaration and marked as Exhibit 9 is a true and correct copy of a PEGC Weekly Update for the week of January 9, 2009 downloaded from PEGC's web site.

12. Attached to this declaration and marked as Exhibit 10 is a true and correct copy of Governor Arnold Schwarzenegger's December 1, 2008 Fiscal Emergency Proclamation.

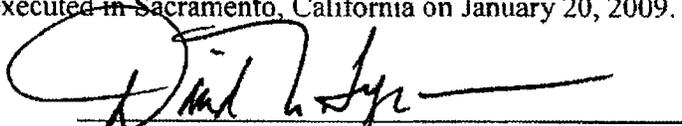
13. Attached to this declaration and marked as Exhibit 11 is a true and correct copy of Governor Arnold Schwarzenegger's December 19, 2008 Executive Order.

14. Attached to this declaration and marked as Exhibit 12 is a true and correct copy of State Controller John Chiang's December 19, 2008 Press Release.

15. Attached to this declaration and marked as Exhibit 13 is a true and correct copy of State Controller John Chiang's December 22, 2008 letter to Governor Arnold Schwarzenegger and leaders of the State Legislature.

16. Attached to this declaration and marked as Exhibit 14 is a presentation prepared by Director of Finance Michael C. Genest entitled, "California at the Brink of Financial Disaster."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in Sacramento, California on January 20, 2009.



David W. Tyra

1 **PROOF OF SERVICE**

2 I, May Marlowe, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 20, 2009, I served a
6 copy of the within document(s):

6 **DECLARATION OF DAVID W. TYRA**

- 7 by transmitting via facsimile the document(s) listed above to the fax number(s) set
8 forth below on this date before 5:00 p.m.
- 9 by placing the document(s) listed above in a sealed _____ envelope and
10 affixing a pre-paid air bill, and causing the envelope to be delivered to a
_____ agent for delivery.
- 11 by causing personal delivery by Messenger of the document(s) listed above to the
12 person(s) at the address(es) set forth below.
- 13 by transmitting via e-mail or electronic transmission the document(s) listed above
14 to the person(s) at the e-mail address(es) set forth below.
- 15 by placing the document(s) listed above in a sealed envelope with postage thereon
16 fully prepaid, the United States mail at Sacramento, California addressed as set
17 forth below.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on _____, 2009, at Sacramento, California.

May Marlowe

EXHIBIT 1



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR**EXECUTIVE ORDER S-09-08**

07/31/2008

WHEREAS the constitutional deadline for enacting a state budget for Fiscal Year 2008-09 has passed without the enactment of a budget, and

WHEREAS in the absence of a budget, State government is constitutionally prohibited from making payments that are not compelled by either the State Constitution or federal law; and

WHEREAS until there is a state budget, the State has no authority to pay the following payments: (1) Vendors and Contractors for goods and services chargeable to Fiscal Year 2008-09; (2) Payroll for legislative staff, appointees, and exempt employees, (3) Payroll for other state employees beyond that required by federal labor law, (4) Highway User Taxes that are apportioned to the state, cities and counties for highway and road improvement projects; (5) Cal Grants to students in higher education; (6) Transfers to the Trial Courts; (7) Transfers to University of California, California State University, and Community Colleges, (8) Transportation Revolving Fund disbursements, (9) Non-revenue limit school payments; and (10) Payments for non-federally mandated social services programs such as Community Care Licensing, Adult Protective Services, State Only Foster Care, State Only Adoptions Assistance, and Cash Assistance Program for immigrants; and (11) tax relief payments to low income seniors and disabled persons; and

WHEREAS on May 1, 2003, the California Supreme Court, in *White v Davis*, issued a decision that, in conjunction with other pre-existing court orders, clarified that during a period that there is no state budget in place, federal labor laws require the State to pay its nonexempt FLSA employees either federal minimum wage or, for those employees that work overtime, their full salaries plus overtime; and

WHEREAS it is not known when a budget will be adopted for Fiscal Year 2008-09, and

WHEREAS as a result of the late budget, there is a real and substantial risk that the State will have insufficient cash to pay for state expenditures; and

WHEREAS since June 2008, the unprecedented number and size of fires in California has created states of emergency that have required additional and substantial expenditures of cash to ensure that there are sufficient resources to effectively fight these fires and save lives and homes; and

WHEREAS it is critical that the State be able to meet any unforeseen emergency such as fire, flood or public health emergency and to continue to make timely payments on constitutionally and federally-mandated obligations and existing obligations to pay holders of state bonds, and

WHEREAS due to the impending cash crisis and budget delay, the State may be forced to consider a Revenue Anticipation Warrant (RAW) at an exorbitant cost to the State, including hundreds of millions of dollars in credit enhancements, in order to make sure there is sufficient cash to pay for state expenditures, and

WHEREAS after the late adoption of a budget, there will be additional cash demands because all of the deferred payments that were not permitted to be made during the budget impasse will become due and payable, and

WHEREAS the late budget has resulted in loss of savings to the State in the amount of \$164 million for July, and failure to enact a budget in August will result in additional loss of savings in the amount of \$323 million; and

WHEREAS as a result of the late budget, additional mitigation measures must be implemented to offset the loss of savings and to ensure that there is sufficient cash to make the State's payments; and

WHEREAS the State employs nearly 22,000 retired annuitants, permanent intermittent employees, and seasonal employees and the State hires new employees at the rate of approximately 1,700 per month; and

WHEREAS except for services and functions of state government deemed critical by this Order, additional mitigation measures need to be taken to immediately reduce expenditures and preserve cash, including the following (1) halting all hiring, transfers and promotions of employees, and contracting for individuals to perform services; (2) prohibition of overtime; (3) termination of the services of retired annuitants, permanent intermittent employees, seasonal employees, temporary help workers and, student assistants; and (4) suspension of personal services contracts

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with the authority vested in me by the Constitution and the statutes of the State of California, do hereby issue the following orders to become effective immediately.

IT IS ORDERED that the services and functions of state government directly related to the preservation and protection of human life and safety, including but not limited to emergency and disaster response activities and the provision of 24-hour medical care, shall be deemed critical and exempt from this Order

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action effective July 31, 2008 to cease and desist hiring of employees (except in instances in which there is a bona fide offer and acceptance prior to the effective date of this Order), transferring employees between State agencies and departments, promoting employees, and contracting for individuals to perform services.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and emergent situations to preserve and protect human life and safety, all State agencies and departments under my direct executive authority take immediate action to cease and desist authorization of all overtime for employees effective July 31, 2008

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action to terminate the services of the following five categories of employees and individuals effective July 31, 2008. (1) Retired Annuitants, (2) Permanent Intermittent Employees, (3) Seasonal Employees; (4) Temporary Help Workers; and (5) Student Assistants

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and except for services provided pursuant to multi-year contracts for Information Technology systems and services, all State agencies and departments under my direct executive authority take immediate action to suspend all personal services contracts effective July 31, 2008.

IT IS FURTHER ORDERED that all Agency Secretaries and Department Directors shall take immediate action to implement this Order, and any other action that will reduce state expenditures.

IT IS FURTHER ORDERED that the Director of the Department of Finance shall establish an exemption process that Agency Secretaries shall utilize to determine if an exemption is justified based on critical services and functions, which may include either cost-reducing or revenue-producing services and functions that will help ensure that there is sufficient cash for the State to make its payments.

IT IS FURTHER ORDERED that Agency Secretaries and Cabinet-level Directors shall report their exemptions to the Cabinet Secretary and the Director of the Department of Finance within 24 hours of approving an exemption.

IT IS FURTHER ORDERED that the Director of the Department of Finance and Director of the Department of Personnel Administration shall work with the State Controller to develop and implement the necessary mechanisms, including but not limited to pay letters and computer programs, to comply with the California Supreme Court's *White v Davis* opinion to pay federal minimum wage to those nonexempt FLSA employees who did not work any overtime.

IT IS FURTHER ORDERED that the necessary mechanisms to ensure compliance with the *White v Davis* opinion must be in place to be effective for the August 2008 payroll

IT IS HEREBY REQUESTED that during this budget impasse, the State Treasurer shall take all actions necessary to maintain the State's ability to pay its bond obligations, including payment of principal and interest with funds in the State Treasury, and shall take all actions that are necessary to protect the State's funds and investments

IT IS FURTHER REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, constitutional officers, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, assist in the implementation of this Order and implement similar mitigation measures that will help to preserve the State's cash supply during this budget impasse.

IT IS FURTHER ORDERED that this Order shall remain in effect until such time as both a Fiscal Year 2008-09 Budget is adopted and the Director of the Department of Finance confirms an adequate cash balance exists to meet the State's fiscal obligations.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 31st day of July 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:

DEBRA BOWEN
Secretary of State

EXHIBIT 2



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR**PRESS RELEASE**

09/23/2008 GAAS.650 08 FOR IMMEDIATE RELEASE

Governor Schwarzenegger Signs State Budget with Budget Reform

Governor Arnold Schwarzenegger today signed the 2008-09 state budget, concluding a very difficult budget year and delivering a real win for Californians with a proposal to achieve meaningful budget reform. It addresses California's \$15.2 billion budget shortfall with a combination of cuts and increased revenues. It fully funds education's Proposition 98 guarantee and does not borrow funding from voter-approved local government or transportation funds. The historic budget reform package includes a strong rainy-day fund aimed at helping smooth out the unpredictable highs and lows in revenues that plague our state and create massive deficits.

"While California is certain to face a difficult budget situation again next year, this budget does not take money out of people's paychecks or borrow from voter-approved local government or transportation funds, and it includes real budget reform with teeth," Governor Schwarzenegger said. "These budget reforms, when approved by voters, will finally put California's budget on a path toward long-term fiscal stability."

Throughout California's history, numerous attempts have been made to reform our state's broken budget system. When the Governor was elected, he committed to finally end California's feast and famine budget cycle. In 2004, the Governor worked with the legislature to pass Proposition 58, which took the first step toward budget reform. In 2005, the Governor attempted the next step in budget reform with Proposition 76, and while it was defeated, the Governor remained committed to reform.

Today, the Governor delivered on his commitment with reforms to address two major flaws in the state budget system—wildly volatile revenues and over spending. In fact, had these reforms been in place over the past decade, this year's budget problem would have been approximately \$10 billion smaller and California would have benefited from \$8 billion in additional funding available for infrastructure and other one-time purposes. The proposal will now go before voters on the next statewide election ballot.

Over the weekend, the Governor used his veto pen to make an additional \$510 million in General Fund reductions, reflecting the Governor's determination to reduce spending to the maximum extent possible. The state also captured \$340 million in savings due to the delay in enacting the budget and the effect of the Governor's executive order.

BUDGET REFORM**A Rainy-Day Fund With Teeth**

Increases the size of California's Budget Stabilization Account (BSA) from 5 percent of General Fund expenditures to 12.5 percent—or approximately \$13 billion dollars today.

Requires annual transfers to the BSA of 3 percent of General Fund and eliminates the ability to suspend those annual transfers. During economic downturns, when funds can be drawn out of the BSA, the transfer would not occur.

In addition to the annual transfer of 3 percent of General Fund to the BSA, requires that all current-year revenue that is above 5 percent of the amounts included in the Budget Act be transferred to the BSA, after first providing funding to education as required under Proposition 98. This means that unexpected spikes in revenues that occur during the fiscal year—normally recognized in the Governor's May Revision—will be transferred to the BSA or used exclusively for one-time spending.

Funds can only be transferred out from the BSA under the following conditions: 1) actual revenues during the Fiscal Year must be below a specified level: prior year spending adjusted by population growth and per capita personal

income growth; 2) funds transferred from the BSA back into the General Fund must be appropriated in a stand-alone bill. The amount transferred out of the BSA during a fiscal year will be limited to the amount which would bring revenues up to prior year spending adjusted by population and per capita personal income growth

When the balance in the BSA reaches 12.5 percent, any excess revenues acquired mid-year will be available for one-time expenditures only. One-time purposes will include: paying down debt, paying off outstanding General Obligation bonds, investing in infrastructure and capital outlay projects, paying for "settle-up" dollars owed to education, pre-paying health care liability for retired employees (OPEB) and tax relief.

Mid-Year Reduction Authority

Authorizes the Director of Finance to do the following when s/he determines, mid-year, that revenues have fallen below specified levels.

- Reduce state operations budgets by up to 7 percent without modifying or suspending the law.
- Freeze Cost of Living Adjustments (COLAs), rate increases or increases in state participation in local costs, as designated in the Budget Act, for up to 120 days.
- The governor can submit urgency legislation to permanently suspend COLAs and other rate increases. If the governor fails to act within the 120 days, or the Legislature fails to adopt the suspension, the COLAs and other rate increases are reinstated.

ADDITIONAL BUDGET CUTS

- This budget holds General Fund spending to virtually no growth this year-\$103.4 billion 2008-09 compared to \$103.3 billion in 2007-08
- The Budget includes a reduction of \$850 million General Fund spending or one percent below the amounts proposed in the budget bill adopted by the Legislature. This reduction represents \$9.7 billion in spending reductions and is due to:
 - \$510 million-General Fund vetoes. These vetoes reflect the Governor's determination to reduce spending to the maximum extent possible given constitutional, statutory and court-ordered spending requirements
 - \$340 million-General Fund savings due to the delay in enacting this Budget and the effect of the Governor Executive Order S-09-08. Given the state's fiscal condition, the order will remain in effect for the remainder of the year.

LOTTERY MODERNIZATION AND SECURITIZATION

- Proposes a ballot measure to modernize the state Lottery and improve the performance of this underperforming state-owned asset
- If passed by voters, future proceeds of an improved state Lottery would be securitized (estimated to be approximately \$5 billion in 2009-10) with the additional revenues used to pay down debt and fill the rainy-day fund in the out-years

EDUCATION FUNDING

Funds the Proposition 98 guarantee at \$58.1 billion - \$1.5 billion higher than the current-year funding. This level of funding eliminates the proposed reductions in the Governor's May Revision and maintains funding to base categorical programs such as class size reduction, special education, child nutrition programs and child care.

BRINGING IN REVENUE

The budget passed by the Legislature originally included a measure that would have taken more money out of hardworking Californians' paychecks by requiring that they pay 10 percent more state taxes from Californians to balance the state's books in 2009 - for a total of \$1.6 billion. The Governor rejected it, and it was replaced instead with a plan to bring in outstanding tax revenue owed to the state by increasing penalties on corporations that under-report by more than \$1 million what they owe the state.

- Imposes a 20 percent penalty on the under-reporting of tax owed to the state and applies to any corporation that under-reports by more than \$1 million. (Applies to taxable years beginning in 2003 in which the statute of limitations is open and allows taxpayers an opportunity to file an amended return by May 31, 2009, to avoid the penalty.)

- The Franchise Tax Board estimates that the state will bring in \$1.51 billion over the 2007-08 and 2008-09 budget years. California has had success with this kind of tax collection program before. The similar tax amnesty program the state conducted in 2005 brought in an additional \$3.6 billion, according to the Department of Finance

A two-year suspension of the Net Operating Loss (NOL) tax deduction. Suspends for two years the ability of corporations to reduce their tax liability based on prior losses and phases in conformity to federal law over three years starting in 2010 by allowing losses to offset profits in two prior years; also extends the period for carrying forward losses from 10 to 20 years

ECONOMIC STIMULUS

Includes an economic stimulus package that.

- Expedites the allocation and disbursement of existing transportation and housing bond funds to stimulate economic growth and job creation immediately.
- Authorizes new lease revenue bonds to accelerate capital outlay projects for higher education.
- Provides flexibility in overtime laws to exempt high-paid software engineers in the competitive technology industry from overtime rules.

EXHIBIT 3

GOVERNOR'S BUDGET



SPECIAL SESSION 2008-09

INTRODUCTION

Economic conditions have deteriorated dramatically since the Governor signed the 2008 Budget Act on September 23. This deterioration was reflected in General Fund revenue collections for the month of September that came in \$923 million below forecast. As a result, California faces a revenue shortfall of \$11.2 billion this year. Specifically, the Department of Finance estimates that General Fund revenues will be approximately \$567 million lower in 2007-08, \$10.7 billion lower in 2008-09, and \$13 billion lower in 2009-10 than earlier projections.

This significant revenue shortfall demands immediate action for the following reasons:

- A revenue reduction of this magnitude will reduce total cash resources below acceptable levels next month. If no action is taken to reduce spending, increase revenues, or a combination of both, the state will run out of cash in February and be unable to meet all of its obligations for the rest of the year.
- The revenue reduction will eliminate the \$1.7 billion reserve adopted in the Budget Act and create a General Fund budget gap of \$9.5 billion.
- Quick action to restore balance to the current year budget will lay the groundwork for balancing the budget for 2009-10.



INTRODUCTION

- Delays in enacting budgetary solutions will significantly reduce the value of those solutions for this year and next, thereby necessitating even more spending reductions and/or revenue increases

In light of the urgency of the situation, Governor Schwarzenegger has called a special session of the Legislature and is proposing a variety of spending reductions and revenue increases to bring spending closer in line with available revenues. In addition, given the economic downturn and its impact on families and workers, the Governor is proposing numerous measures to help stimulate the economy to help families stay in their homes and to keep Californians employed.

OVERVIEW OF THE PROPOSALS TO ADDRESS THE SHORTFALL

The Governor's special session proposals include spending reductions totaling \$4.5 billion, or 49 percent of the total proposed solutions, while revenue increases account for \$4.7 billion, or 51 percent of the total solutions. As the figure shows, these proposals are in addition to the \$24.3 billion in solutions enacted in the Budget Act of 2008. When all of the solutions are considered, spending reductions account for 49 percent, revenue increases account for 39 percent and borrowing accounts for 12 percent.

Final spending and revenue projections for the 2009-10 Governor's Budget will not be available until January. Therefore, this special session proposal is based on preliminary projections of the revenue shortfall only and does not reflect the total potential budget gap. The economic situation and the revenue shortfall are so severe that it is clear that there will be a substantial deficit projected for 2009-10. Therefore, the descriptions of the fiscal effects of the special session proposals include estimates of their impact in 2009-10.

Figure INT-01
Major Solutions
(Dollars in Millions)

	As of 2008 Budget Act			2008-09		Total
	2007-08 & prior	2008-09	Total	Special Session		
Revenue Increases						
Corporate Penalty for Understatement of Tax	\$1,435	\$75	\$1,510			\$1,510
Net Operating Loss Suspension and Carryback		1,265	1,265			1,265
Tax Credit Limitation and Usage Modification		615	615			615
Limited Liability Corporations Payment Date Change		360	360			360
Accelerate Estimated Payments		1,270	1,270			1,270
Remove Estimated Payment Option for High Income Taxpayers		1,035	1,035			1,035
Accrual Change	418	1,440	1,858			1,858
Additional Tax Revenues (LAO/DOR) (June)	120	-250	-130			-130
Additional Tideland Revenues (LAO/DOR)	24	166	190			190
Additional Revenues from Tribal Compacts		78	78			78
FTB/BOE Revenue Options		226	226			226
Transfers from Special Funds		141	141			141
Justice Settlement (transfer to GF)		11	11			11
Temporary (3-year) 1.5 cent increase in Sales Tax				\$3,540		3,540
Oil Severance Tax (8.6% tax rate, exception for stripper wells)				530		530
Expand Sales Tax to Some Services				357		357
Nickel a Drink Alcohol Tax				293		293
All Other Changes	63	74	137			137
Total Revenue Increases	\$2,058	\$6,506	\$8,564	\$4,720	51%	\$13,284 40%
Borrowing						
Economic Recovery Bonds	\$3,313		\$3,313			\$3,313
Loans from Special Funds		\$714	714			714
Total Borrowing	\$3,313	\$714	\$4,027	\$0	0%	\$4,027 12%
Expenditure Reductions						
Proposition 98						
Property Tax	\$276	\$423	\$699			\$699
Redevelopment Agency Pass Through		350	350			350
Settle-Up Payment	150		150			150
Base	671	2,843	3,314	\$2,500		5,814
Non Proposition 98						
Budget Balancing Reductions	113	2,154	2,267			2,267
Non Budget Balancing Reductions						
Medi-Cal Program Savings	165		165	142		307
Suspend Prop 58 Transfer		1,509	1,509			1,509
Use of Public Transportation Account for Home-to-School Transportation		488	488			488
Use Spillover Monies for Debt Service Payments		250	250			250
Reimburse of GF for Past Debt Service Payments from TDSF		235	235			235
Reduce Mandates Funding		53	53			53
Eliminate Estimated Claims for N98 Mandates		75	75			75
Defer Third Year Payment of 15-Year Plan for Old N98 Mandates		75	75			75
Eliminate Funding for CCPOA Last, Best, and Final Offer	260	230	490			490
Health and Dental Benefits for Annuitants Premium Reductions	23	81	104			104
State Cash Management Improvement Program		60	60			60
Reduction (Control Section 4 D7)		50	50			50
Savings Due to Budget Delay and Executive Order S-09-08		340	340			340
CDCR--Limit Parole Supervision				78		78
Funding Realignment for Public Safety Grant Programs				250		250
Reduce UC and CSU budgets to the 10% Across-the-Board Reduction Funding Level				132		132
Developmental Services Program Savings				34		34
SSI/SSP Program Savings				391		391
CalWORKs Program Savings				274		274
IHSS Program Savings				118		118
Reduce State Funding for Transit Agencies				230		230
Eliminate Funding for the Williamson Act				35		35
Employee Compensation Changes				320		320
All Other Changes	60	137	197			197
Total Expenditure Reductions, before votes	\$1,717	\$9,153	\$10,870	\$4,504	48%	\$15,374 46%
Votes		\$510	\$510			510 2%
Reduce Reserve		\$306	\$306			306 1%
Total Solutions	\$7,088	\$17,189	\$24,277	\$9,224	100%	\$33,501 100%

STIMULATE THE ECONOMY/RETAIN AND CREATE JOBS

Finally, the special session will focus on various proposals to help stimulate the economy, retain and create jobs, and reduce barriers to job creation and retention

The economic stimulus proposals include accelerating the appropriation of \$700 million remaining in Proposition 1B funds for improvements to local streets and roads. These funds will be available for cities and counties that agree to encumber the funds by December 31, 2009, certify that their local fund balances for road maintenance do not exceed three months of their Highway Users Tax Account (HUTA) and Transportation Investment Fund (TIF) revenues, and meet accountability requirements

The economic stimulus proposal also provides an additional \$800 million in Proposition 1B funding in 2008-09 for local transit agencies to accelerate several large local transit projects. Moreover, to create jobs in a sector heavily impacted by the current downturn, some Proposition 1B projects administered by Caltrans totaling \$822 million will be accelerated by waiving some state and federal environmental requirements

The economic stimulus proposal also includes accelerating the implementation of \$147 million of water and flood projects funded by Propositions 84 and 1E. Under existing law, these funds will not be available until March 1, 2009. The Administration believes urgency legislation is necessary to make these Proposition 84 and 1E funds available immediately. In addition, the Governor will seek action by the federal government to move an additional \$571 million in water projects forward now.

The special session proposal will also include the reintroduction of the necessary amendments to AB 900 so that needed construction for the Department of Corrections and Rehabilitation can begin as well as to create valuable jobs in the state. The Administration is also looking forward to continuing to work with the Legislature to address the correctional systems' capital needs for medical and mental health services.

The Governor will propose the following in the special session.

- Easing regulations to allow "in the pipeline" hospital construction projects to move forward
- Providing flexibility to employers regarding flex time schedules, meal and rest periods, and overtime rules, to reduce the amount of costly litigation and encourage employers to keep jobs in-state

INTRODUCTION

- Providing tax incentives to new film and television production locating in California and production that has left the state, to return in-state
- Creating reforms to help homeowners avoid foreclosure and stay in their homes, as well as reforms to the lending process that will help prevent a future mortgage crisis in California

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

ECONOMIC OUTLOOK

Less than six weeks after the enactment of the 2008-09 budget, a string of weak economic statistics, arriving during a spreading credit crunch and the bankruptcies and rescues of several financial institutions, has convinced most economists that the national economy is in recession. Most persuasive was a sharp fall in consumer spending in the third quarter of 2008 and a stock market collapse in October. Mounting job losses, falling home prices, plunging equity prices, and tight credit conditions have worn down consumers. One widely followed measure of consumer confidence – The Conference Board Consumer Confidence Index – fell to a record low in October. Slower consumer spending is, in turn, dampening business spending on equipment and structures.

While economic statistics on the California economy are fewer and less timely than those on the national economy, there is no doubt that the California economy is experiencing the same pressures as the national economy. Job losses have grown in recent months. The state's unemployment rate has risen quickly in the last year and is considerably higher than the national rate. Housing prices are falling faster in the state than in the nation. Taxable sales were below year-ago levels in the most recent four quarters of available data. Auto sales have dropped farther in the state than the nation.



ECONOMIC OUTLOOK AND REVENUE ESTIMATES

The outlook for the national and California economies has deteriorated considerably since the budget enactment. Weaker GDP growth, bigger job losses, and smaller personal income gains are now expected in 2009. Whereas a short, modest economic decline was expected before, a deeper and longer decline is much more likely now. How long and how deep depends largely on how long it takes for credit to become much more available.

The Nation

Real GDP decreased 0.3 percent in the third quarter of 2008, with the weakness widely spread across major spending categories. A 3.1-percent drop in consumer spending—the largest percentage decline in 28 years—did most of the damage. Business equipment spending and residential construction also fell, and export growth slowed.

The economy ended the third quarter much weaker than it began, and this was before the stock market delivered its greatest drop in 21 years in October with paper losses of \$2.5 trillion. Retailers are expected to report very weak October sales, which will bode poorly for holiday sales. The fourth quarter of 2008 is expected to be considerably weaker than the third quarter.

The Federal Reserve and U.S. Treasury took dramatic steps in September and October to reinvigorate credit markets. On October 29, the Federal Reserve lowered by one-half percentage point its target for the interest rate banks charge one another for short-term loans. This brought the target rate to 1 percent, leaving the central bank very little room to further ease monetary policy. Thus, it appears increasingly likely that Congress will enact another economic stimulus package.

California

California labor markets have weakened as 2008 has progressed. In the first nine months of the year, California lost 78,600 jobs, but in the first five months the average monthly loss was 5,200 jobs, while in the last four months, it was 13,200 jobs. Seven of the 11 major industry sectors have lost jobs since the end of 2007, with construction, retail trade, and financial activities—which includes real estate and mortgage lending services—accounting for the bulk of the job losses. The state's unemployment rate began 2008 at 5.9 percent and quickly rose to 7.7 percent in August and September.

California's housing slump continues to be a significant drag on the economy. But home sales have started to pick up, especially sales of distressed houses. New home sales remain at low levels. Average home prices continue to drop. In September, the median price of existing homes sold, \$316,500, was 41 percent lower than the median price a

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

year earlier. Some of the decline is due to a changing mix of homes that have sold—more moderately priced homes and fewer expensive homes. Unsold inventories have stabilized at six months of sales at current monthly sales rates. Single-family home building appears to have stabilized at very low rates.

The Outlook

The outlook for the state and national economies darkened considerably as 2008 progressed and accelerated through the end of October. Economic growth was already expected to be low before the credit and stock market turmoil developed. Recent economic statistics point to considerable economic weakness in the fourth quarter of 2008 and in 2009. It appears that consumers will get little reprieve from job losses, falling home prices, and low equity prices. The state's unemployment rate could exceed 10 percent in some months of 2009 and 2010. The impact of the financial rescue measures enacted by Congress in October is uncertain at this point. The national and California economies will face strong headwinds in 2009 and the first half of 2010.

A new forecast will be prepared for the Governor's Budget that will incorporate new economic data released in November and be informed by events and other forecasts that become available in the next few weeks.

Figure Econ-01 shows selected economic indicators used in the current forecast.

Figure ECON-01
Economic Outlook
Percentage changes unless otherwise noted

	2008 (Est.)	2009 (Projected)	2010 (Projected)
Selected United States Economic Indicators			
Real gross domestic product	1.4	-0.9	1.6
Personal income	4.3	1.9	2.6
Corporate profits before taxes	-12.2	1.4	6.3
Nonfarm wage and salary employment	-0.1	-1.6	0.2
Unemployment rate (Percent)	5.7	7.6	8.1
Housing starts (1,000s of units)	931	737	1,013
Selected California Economic Indicators			
Personal income	4.0	2.2	2.6
Nonfarm WAS employment	-0.4	-1.2	-0.4
Unemployment rate (Percent)	7.0	9.0	9.7
Housing permits (1,000s of units)	67	64	83

Forecast based on data available as of October 2008
Percent changes calculated from unrounded data

REVENUE ESTIMATES

To provide the Governor and the Legislature with the most up-to-date assessment of current year revenues, the Department has taken into account available data and input from economists, including experts outside of the department to provide an updated revenue projection. Developing this preliminary revenue assessment is highly unusual and outside the traditional revenue estimates included in the Governor's Budget or the May Revision. Based on the latest available data, the Department now projects that baseline General Fund revenues are expected to be approximately \$102.4 billion in 2007-08, \$91.3 billion in 2008-09, and \$89.5 billion in 2009-10. New revenues from tax law changes proposed in the special session are estimated to be \$4.7 billion in 2008-09 and \$10.3 billion in 2009-10. Proposed total revenues are \$96.1 billion in 2008-09, and \$99.8 billion in 2009-10.

Expected baseline revenues have been reduced from Budget Act estimates by approximately \$567 million in 2007-08, \$10.7 billion in 2008-09, and \$13 billion in 2009-10. The reductions are primarily due to reductions to the economic forecast for personal income, capital gains and corporate profits, and lower tax collections. Expected baseline revenues for 2009-10 also reflect a \$500 million reduction for the sale of the EdFund, which is no longer expected to be completed in 2009-10.

The \$7.2 billion revenue reduction to 2008-09 baseline Personal Income tax revenues is largely due to lower expected capital gains. Capital gains accounts for \$4.0 billion of the 2008-09 personal income tax revenue loss. The remaining approximately \$3.2 billion reduction is due to a lower forecast for personal income components such as wages and salaries and proprietorship income.

The approximately \$1.6 billion reduction to 2008-09 baseline Sales and Use tax revenues is due to lower collections, and lower expected disposable income, auto sales and less construction of new housing.

The approximately \$1.6 billion reduction to baseline Corporation tax revenues is due to lower third-quarter corporate estimated payments and lower expected corporate profits.

Figure REV-01 displays the forecast changes between Budget Act and Special Session

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

Figure REV-01
2008-09 Special Session
GENERAL FUND REVENUE FORECAST
SUMMARY TABLE
Reconciliation with 2008-09 Budget Act
(In millions)

Source	Budget Act	Special Session			
		Baseline	Change between Forecasts	Proposed	Change between Forecasts
Fiscal 07-08					
Personal Income Tax	\$54,380	\$54,289	-\$91	\$54,289	-\$91
Sales & Use Tax	26,813	26,613	-\$200	\$26,613	-\$200
Corporation Tax	11,926	11,690	-\$236	\$11,690	-\$236
Insurance Tax	2,171	2,173	\$2	\$2,173	\$2
Other Revenues	6,525	6,457	-\$68	\$6,457	-\$68
Transfers	1,212	1,238	\$26	\$1,238	\$26
Total	\$103,027	\$102,460	-\$567	\$102,460	-\$567
Fiscal 08-09					
Personal Income Tax	\$55,721	\$48,479	-\$7,242	\$48,479	-\$7,242
Sales & Use Tax **	27,111	25,486	-\$1,625	\$29,383	\$2,272
Corporation Tax	13,073	11,426	-\$1,647	\$11,426	-\$1,647
Insurance Tax	2,029	2,177	\$148	\$2,177	\$148
Other Revenues	3,242	2,967	-\$275	\$3,789	\$547
Transfers	816	798	-\$18	\$798	-\$18
Total	\$101,992	\$81,333	-\$10,659	\$86,053	-\$5,940
Change from Fiscal 07-08	-\$1,035	-\$11,127		-\$6,408	
% Change from Fiscal 07-08	-1.0%	-10.9%		-6.3%	
Fiscal 09-10					
Personal Income Tax	\$55,863	\$48,824	-\$7,039	\$48,824	-\$7,039
Sales & Use Tax **	29,248	25,234	-\$4,014	\$33,709	\$4,461
Corporation Tax	11,982	10,731	-\$1,251	\$10,731	-\$1,251
Insurance Tax	2,135	2,135	\$0	\$2,135	\$0
Other Revenues	3,366	2,603	-\$763	\$4,389	\$1,023
Transfers	15	61	\$46	\$61	\$46
Total	\$102,609	\$89,588	-\$13,021	\$99,849	-\$2,761
Change from Fiscal 08-09	\$617	-\$1,745		\$3,796	
% Change from Fiscal 08-09	0.6%	-1.9%		4.0%	

** Proposed sales and use tax numbers include \$322 million for 2008-09 and \$713 million for 2009-10 that will be transferred under Proposition 42 to the Transportation Investment Fund. Of these amounts, \$876 million will be transferred in 2009-10 and \$359 million in 2010-11.

Proposed Law Changes

Temporary Sales Tax Increase: Effective January 1, 2009, a temporary rate increase of 1.5 percent is proposed for three years in the General Fund Sales and Use tax. At the end of three years, the Sales and Use tax rate will return to 5 percent. This proposal is expected to generate additional sales tax revenues of \$3.540 billion in 2008-09 and \$7.319 billion in 2009-10 for the General Fund. These amounts include \$322 million for 2008-09 and \$713 million for 2009-10 that will be transferred under Proposition 42 to the Transportation Investment Fund. Of these amounts, \$676 million will be transferred in 2009-10 and \$359 million in 2010-11.

Broaden the Sales and Use Tax to Include Certain Services: Effective February 1, 2009, it is proposed to apply the sales and use tax rate to appliance and furniture repair, vehicle repair, golf, and veterinarian services. Effective March 1, 2009, the sales and use tax rate will be applied to amusement parks and sporting events. Assuming a 6.5-percent General Fund tax rate, this proposal is expected to generate additional General Fund sales tax revenue of \$357 million in 2008-09 and \$1.156 billion in 2009-10. These estimates assume initially low collections but significant improvements in collections over time. This proposal will also generate revenues for local government agencies of \$151 million in 2008-09 and \$487 million in 2009-10, including \$27 million for local public safety funds in 2008-09 and \$89 million in 2009-10.

Oil Severance Tax: Effective January 1, 2009, it is proposed to impose an oil severance tax upon any oil producer extracting oil from the earth or water in California. The tax shall be applied to the gross value of each barrel of oil at a rate of 9.9 percent. Any oil produced by a stripper well, in which the average value of oil as of January 1 of the prior year is less than fifty dollars (\$50) per barrel, will be exempt from this tax. Also, any oil owned or produced by any political subdivision of California will be exempt from this tax. This proposal is expected to generate additional revenues of \$528 million in 2008-09 and \$1.195 billion in 2009-10.

Increase Alcohol and Excise Taxes by 5 Cents a Drink: Alcohol excise taxes are proposed to be raised by five cents per drink beginning on January 1, 2009. A drink is defined as 1.5 ounces of distilled spirits, 12 ounces of beer, or 5 ounces of wine. This increase is estimated to raise \$293 million in 2008-09 and \$585 million in 2009-10. These estimates are adjusted to reflect an estimate of reduced consumption caused by the increase in price. Alcohol taxes were last raised in 1991. See the Funding Realignment portion of Program Reductions for information on uses of these revenues.

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

Vehicle Registration Fee Increase: Effective February 1, 2009, annual vehicle registration fees are proposed to be increased by \$12 to offset a shift of Vehicle License Fee revenue from the support of the Department of Motor Vehicles to support local criminal justice programs. This special fund revenue will provide \$150 million for these programs in 2008-09 and \$359 million in 2009-10 and future years. See the Funding Realignment portion of Program Reductions for information on uses of these revenues.

PROGRAM REDUCTIONS

The Administration proposes a total of \$4.5 billion of General Fund reductions in 2008-09 program costs. These reductions will generate \$6.1 billion in General Fund savings in 2009-10. The reductions are in addition to the \$11.38 billion in expenditure reductions in the 2008 enacted budget.

PROPOSITION 98 (K-14)

Total Proposition 98

Due to significant declines in anticipated revenues since the budget was enacted, the Administration proposes total Proposition 98 expenditure reductions of \$2.5 billion in 2008-09 in the special session, including eliminating the partial COLA provided to K-12 revenue limits and community college apportionments, Child Care programs savings, and further reducing general purpose funding for all Local Education Agencies, which will be accompanied by dramatic flexibility provisions that will allow LEA's to transfer categorical funds at their discretion to ensure adequate funding for essential classroom instruction and services. Specific savings proposals are summarized below.

K-12 Programs

- \$244.3 million is proposed for reduction by eliminating the 0.68-percent COLA provided for school district and county office of education revenue limits.

PROGRAM REDUCTIONS

- \$1.791 billion is proposed for reduction by further reducing the amount for local education agency (LEA) revenue limits, coupled with flexibility to transfer categorical funds to each LEA's general fund. This strategy is necessary to provide maximum flexibility to local education agencies (LEAs). It is the Administration's expectation that LEAs will maintain as much funding as possible for direct classroom instruction and the most essential support services. Therefore, the Administration proposes to authorize LEAs to transfer any categorical allocations received to their general fund for any purpose up to the amount of their share of the reduction. Districts electing to utilize this flexibility must adopt a transfer plan in a regularly scheduled governing board meeting and agree to report the amounts and categorical programs from which transfers were made and the purposes for which those funds were used.
- \$55 million is proposed for reduction in capped child care programs to reflect the amount of funding that will not be allocated in current year contracts as reported by the Department of Education for General Child Care, Preschool, Alternative Payment and other programs. Because this amount has not been allocated for contracts with providers, it will not result in a reduction of services to families.
- \$42 million is proposed for reduction from Stage 2 and Stage 3 child care programs based on revised estimates for lower than anticipated caseload since the budget was enacted. Stage 2 costs are revised down by \$27 million and Stage 3 costs are revised down by \$15 million.
- It is also proposed that \$108 million in recently identified prior-year child care savings be reappropriated for CalWORKs Stage 2 and 3 programs to offset an estimated shortfall in one-time savings from the After School Safety and Education (ASES) program that was anticipated to fund part of the 2008-09 costs for these caseload-driven programs.
- \$71.2 million in reductions are proposed to specific programs that are currently underutilized. The amounts and programs with recently identified prior-year savings that are proposed for reduction include \$28.6 million for K-3 Class Size Reduction, \$2.6 million for Principal Training, \$3.3 million for Alternative Credentialing, and \$1 million for the Pupil Retention Block Grant. Further, the Administration proposes to reduce the appropriation for the Targeted Instructional Improvement Grant (TIIG) program on a one-time basis and backfill that reduction through reappropriation of the one-time prior-year savings anticipated from the aforementioned programs. The Administration recognizes these savings amounts are subject to refinement and will work with the Legislature to adjust this proposal to conform to any updated information that becomes available.

Community Colleges (CCC)

- \$39.8 million is proposed for reduction by eliminating the 0.68-percent COLA for CCC apportionments enacted in the education trailer bill (Section 33 of Chapter 519, Statutes of 2008)
- \$292.4 million is proposed for reduction by further reducing the amount for general purpose apportionments and providing categorical flexibility similar to the proposal for K-12 LEAs. Similarly, it is the Administration's expectation that districts will maintain as much funding as possible to maximize course offerings aligned with the system's highest priorities for transfer, basic skills and vocation/career preparation along with the most essential support services. Thus, it is proposed that community college districts may transfer categorical allocations to the district's general fund for any purpose up to the amount of their share of the \$290.1 million reduction. Districts electing to utilize this flexibility must also adopt plans in public meetings and agree to report the amounts and programs from which transfers were made and the purposes for which those funds were used.

HIGHER EDUCATION

\$132 million in ongoing reductions are proposed for the higher education segments, excluding community colleges. Specific amounts are detailed below.

University of California (UC)

- A reduction of \$65.5 million is proposed on an unallocated basis. Together with UC's \$33.1 million share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, expenditures for UC will reflect approximately a ten-percent reduction from the workload budget, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

California State University (CSU)

- A reduction of \$66.3 million is proposed on an unallocated basis. Together with CSU's \$31.3 million share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, expenditures for CSU will reflect a ten-percent reduction from the workload budget, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

PROGRAM REDUCTIONS

Hastings School of Law (HCL)

- A reduction of \$402,000 is proposed on an unallocated basis. Together with HCL's \$114,000 share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, expenditures for HCL will reflect a ten-percent reduction from the workload budget, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

CORRECTIONS AND REHABILITATION

Parole Reform, Enhanced Credit Earning, and Property Crime Threshold Revisions

The Administration's special session proposal reflects reductions in the Department of Corrections and Rehabilitation of \$78.1 million in 2008-09 and \$677.6 million in 2009-10, as a result of the following proposals:

- Focus parole efforts on those offenders who have committed serious, violent, or sexual crimes. Under this proposal, offenders without current or previous convictions for serious, violent, or sexual crimes would not receive parole supervision after their release from prison. This would substantially reduce parole costs in the Department, ensure that the highest risk offenders continue to receive full supervision on parole, and reform the current "revolving door" process in which more prison admissions result from parole revocations than court convictions. This proposal is estimated to result in General Fund savings of \$78.7 million in 2008-09 and \$535.9 million in 2009-10.
- Enact statutory changes that would authorize the CDCR to provide up to four months of earned credit for each program successfully completed by an eligible inmate. Incentivizing program participation and completion will reduce inmate violence within the CDCR and will facilitate the inmate's reintegration into society. Additional changes would authorize consistent day-for-day credit for all eligible inmates who comply with institutional rules, continuous day-for-day credits for inmates who are in jail pending transfer to a state prison, and enhanced credits for inmates who are awaiting an assignment at a conservation camp. These proposals result in a cost of \$3.4 million in 2008-09 and a savings of \$90.5 million ongoing beginning in 2009-10, after accounting for savings already included in the 2008-09 Budget Act.
- Implement changes to adjust the statutory threshold values for determining when property crimes are prosecuted as a felony to reflect inflation since 1982. As a result, the special session reflects General Fund savings of \$2.9 million General Fund in 2008-09, growing to \$51.3 million in 2009-10.

LEGISLATURE

- No specific reductions are proposed for the Legislature, however, the 2008-09 Budgets of other constitutional officers including the Governor's Office, the Attorney General, and the Judicial Branch included reductions in the range of ten percent. The Legislature's 2008-09 Budget reflects a reduction of a lesser level. The Administration hopes the Legislature can achieve savings that are more in line with the savings achieved by constitutional executive officers.

PUBLIC SAFETY GRANT PROGRAMS

Reductions for Various Public Safety Grants

- The proposal includes the elimination of a total of \$51.7 million General Fund in 2008-09 and \$103.5 million General Fund in 2009-10 for local public safety funding. This includes the following:
 - \$14.7 million in 2008-09 and \$29.4 million in 2009-10 that is allocated to counties that operate juvenile camps and ranches. While these funds are available to all counties based on the number of beds occupied, these funds currently support the operation of 29 camps or ranches. These funds are administered by the CDCR.
 - \$28.7 million in 2008-09 and \$57.4 million in 2009-10 for various local assistance programs administered by the Office of Emergency Services. Included in this reduction is funding for Vertical Prosecution Block Grants, Rural Crime Prevention, California Multi-jurisdictional Methamphetamine Enforcement Teams, the High Technology Theft Apprehension Program, Sexual Assault Felony Enforcement Teams, and various other public safety programs.
 - \$8.3 million in 2008-09 and \$16.7 million in 2009-10 for grants to county sheriffs of specified small and rural counties for supplemental public safety funding.

HEALTH AND HUMAN SERVICES

To address the budget shortfall, the Administration proposes legislation to implement the following eligibility and benefit changes effective December 1, 2008:

Medi-Cal

- Reduce California benefits to the level of optional benefits provided in most states. Cease to provide the following optional benefits for adult (excluding children): dental,

PROGRAM REDUCTIONS

chiropractic, incontinence creams and washes, acupuncture, audiology, speech therapy, optometry/optometrists, optician/optical lab services, podiatry, and psychology services. California will still be providing more optional benefits than most states. General Fund savings of \$41 million result in 2008-09 and \$129.9 million in 2009-10.

- Limit benefits for newly qualified immigrants and immigrants who permanently reside under the color of law (PRUCOL) to the same level as currently provided for undocumented immigrants. Benefits retained include emergency services, pregnancy-related services, long-term care in a nursing facility, and breast and cervical cancer treatment. General Fund savings of \$29.7 million result in 2008-09 and \$144.4 million in 2009-10.
- Implement a monthly eligibility determination for emergency services for undocumented immigrants. This population currently receives up to six months of health services after an initial eligibility determination. This proposal would limit services to one month unless and until a subsequent emergency ensues. General Fund savings of \$15.1 million result in 2008-09 and \$73.5 million in 2009-10.
- Reduce the income level for new applicants to the Section 1931 (b) program to the pre-March 2000 standard of an average of approximately 72 percent of the federal poverty level, and define under-employment as the principal wage earner working less than 100 hours a month for persons applying for Section 1931 (b) and for the medically needy program. The Section 1931 (b) program provides Medi-Cal eligibility to families with low incomes who meet eligibility requirements. Parents with higher incomes who meet the resource and status requirements would be eligible for the Medi-Cal medically needy program with a share of cost. General Fund savings result of \$8.6 million in 2008-09, \$109 million in 2009-10, and ultimately \$342.5 million in 2011-12.
- Shift federal Safety Net Care Pool funding from designated public hospitals to portions of the California Children's Services, the Genetically Handicapped Persons, the Medically Indigent Adult Long-Term Care, and Breast and Cervical Cancer Treatment programs, which are eligible for these funds. No net reduction in services to beneficiaries will result from this shift. General Fund savings of \$3.7 million result in 2008-09 and \$54.2 million in 2009-10.
- Reinstate share of cost for Medi-Cal for aged, blind and disabled individuals with incomes over the SSI/SSP limits. Eligibility for Medi-Cal without a share of cost for beneficiaries previously expanded in January of 2001 from 69 percent up to 127 percent of the federal poverty level. This proposal would align eligibility with the SSI/SSP limits, and generate General Fund savings of \$43.8 million in 2008-09, \$203.7 million in 2009-10, and \$212.8 million annually thereafter.

Three-Percent Reduction to Regional Center Operations and Purchase of Services Payments

- Discount payments to regional center service providers by three percent effective December 1, 2008. Certain types of payments will be exempt from this reduction, including supplemental rent/lease payments for consumers receiving supported and independent living services, and "usual and customary" rates for services such as bus fares. The department will also consider exemptions necessary to ensure the health and safety of consumers. Payments for supported employment services will not be discounted. Additionally, to assist in the implementation of the reduction to regional center operations funding, the Administration proposes to provide workload relief such as suspension of reporting requirements for staff salary schedules and contract expenditures, and suspension of the 1:66 coordinator-to-consumer ratio. For those consumers who are on the federal Home and Community Based Services Waiver, are three years of age and younger in the Early Start Program, or are consumers moving from a developmental center into the community, the coordinator-to-consumer ratio will not be suspended. These changes are expected to result in General Fund savings of \$34.2 million in 2008-09 and \$59.8 million in 2009-10.

Supplemental Security Income/State Supplementary Payment (SSI/SSP)

- Reduce SSI/SSP grants to the federal minimum effective March 1, 2009, which would result in General Fund savings of \$348.9 million in 2008-09 and \$1.1 billion in 2009-10. Currently, the SSI/SSP grant for an aged/disabled individual is \$870 per month and the grant for aged/disabled couples is \$1,524 per month. After provision of a federal cost-of-living adjustment in January, 2009, this proposal would reduce the monthly grants to \$830 and \$1,407 for aged/disabled individuals and couples, respectively.
- Eliminate the Cash Assistance Program for Immigrants effective March 1, 2009, which would result in General Fund savings of \$37.8 million in 2008-09 and \$114.1 million in 2009-10. This state-only program provides benefits to aged, blind, and disabled legal immigrants.

CalWORKs

- Modify the Safety Net program, by continuing benefits for families beyond their 60-month time limit only if they meet federal work participation requirements. This would result in General Fund savings of \$80.7 million in 2008-09 and \$242 million in 2009-10, assuming March 1, 2009 implementation.
- Provide cash aid for families receiving child-only benefits in a manner consistent with other CalWORKs families, for General Fund savings of \$76.8 million in 2008-09 and

PROGRAM REDUCTIONS

\$230.3 million in 2009-10. Under this proposal, aid to some families receiving child-only benefits would be limited to 60 months. These families include parents or caretakers who are undocumented non-citizens or certain types of felons.

- Institute a face-to-face self-sufficiency review every six months with a county worker for CalWORKs families who are not meeting work requirements. This proposal would result in General Fund savings of \$23.3 million in 2008-09 and \$94.8 million in 2009-10, assuming March 1, 2009 implementation. These reviews would assess what services or resources may be necessary to address barriers that are preventing participation and help remove a family's dependence upon public assistance.
- Reduce CalWORKs grants by 10 percent effective March 1, 2009, which would result in General Fund savings of \$93.2 million in 2008-09 and \$279.6 million in 2009-10. This proposal would reduce the maximum monthly grant for a family of three from \$723 to \$651.

In-Home Supportive Services (IHSS)

- Provide IHSS domestic and related services to individuals with the highest levels of need, as measured by a functional index score of 4 or higher. This proposal would result in General Fund savings of \$23.1 million in 2008-09 and \$71.4 million in 2009-10, assuming March 1, 2009 implementation. The provision of other IHSS services to all eligible consumers regardless of their functional index score would not be impacted.
- Focus the state buyout program for IHSS recipients whose Medi-Cal share of cost is higher than their IHSS share of cost on persons with the most severe needs. This proposal would result in General Fund savings of \$12.3 million in 2008-09 and \$37 million in 2009-10, assuming March 1, 2009 implementation. Under this proposal, IHSS recipients with average functional index scores below 4 would be required to pay for more of their services before qualifying for subsidies.
- Limit state participation in the wages of IHSS workers to the state minimum wage plus \$0.60 per hour for health benefits. Assuming March 1, 2009 implementation, this proposal would result in General Fund savings of \$82.9 million in 2008-09 and \$248.8 million in 2009-10.

California Food Assistance Program (CFAP)

- Eliminate the CFAP effective July 1, 2009, which would result in General Fund savings of \$30.3 million in 2009-10. This state-only program provides food benefits to low-income legal non-citizens.

STATE TRANSIT ASSISTANCE PROGRAM

Eliminate Local Transit Grants

- This proposal eliminates the portion of the State Transit Assistance program that is paid from the Public Transportation Account (\$229.9 million in 2008-09 and \$306 million in 2009-10), but retains \$350 million available from Proposition 1B for local transit programs. This program has historically provided between 3 and 5 percent of total funding for local transit agency operations and capital costs associated with local mass transportation programs. The majority of local funding comes from farebox revenues, federal funds, state capital funding, and other local tax revenues.

WILLIAMSON ACT

- This proposal eliminates \$34.7 million in state reimbursements to local taxing agencies that partially defray the loss of property tax revenues from contracts with local landowners who agree to limit the use of their land to agricultural, scenic, or open space purposes in exchange for reduced property taxes. This action does not eliminate the ability of local entities to enter into these agreements.

While local governments can cancel contracts if state funding is eliminated, they cannot begin to collect taxes based on the property's full value until four years have elapsed. After four years the property is annually taxed at an incrementally higher value over a five-year period. In the sixth year, the property is taxed at full value.

FUNDING REALIGNMENT

In an effort to reduce General Fund expenditures and to create permanent, stable funding for certain high-priority programs, the Governor's special session proposal generates additional revenues to fund various public safety programs and drug and alcohol prevention and treatment services. Specifically, the proposal increases revenues by \$442.5 million in 2008-09 and \$944 million in 2009-10 to support these high-priority programs as follows:

Local Law Enforcement Grants

- The proposal provides \$150 million in 2008-09 and \$359 million in 2009-10 in Vehicle License Fee (VLF) funding for specific law enforcement grant programs. The proposal also eliminates General Fund support for these programs, resulting in savings of \$198.8 million in 2008-09 and \$397.5 million in 2009-10. These VLF funds were previously used to support the Department of Motor Vehicles (DMV) operations.

PROGRAM REDUCTIONS

which will now be funded by increased revenue in the Motor Vehicle Account derived from a \$12 increase in the annual vehicle registration fee. The specific programs that will be funded from the VLF include the following:

- o \$55.7 million in 2008-09 and \$135.9 million in 2009-10 to support a broad spectrum of local juvenile probation activities statewide.

With this funding realignment proposal, overall funding to support juvenile probation activities will be reduced by \$20.2 million in 2008-09 and \$16 million in 2009-10, but the program will receive a permanent, statutory funding stream.

- o \$94.3 million in 2008-09 and \$223.1 million in 2009-10 to support the COPS/JJCPA Programs and the Booking Fees Program. The COPS/JJCPA Programs will receive \$78.6 million in 2008-09 and \$191.6 million in 2009-10. The Booking Fees Program will receive \$15.8 million in 2008-09 and \$31.5 million in 2009-10.

With this funding realignment proposal, overall funding for the COPS/JJCPA Programs will be reduced by \$28.6 million in 2008-09 and \$22.6 million in 2009-10. Overall funding for the Booking Fee Program will not be impacted in either year.

Alcohol Excise Tax for Drug and Alcohol Prevention and Treatment

- Alcohol excise taxes are proposed to be raised by five cents a drink beginning on January 1, 2009. This increase is estimated to raise \$293 million in 2008-09 and \$585.0 million in 2009-10.

Revenues generated from these taxes will be used to fund drug and alcohol abuse prevention and treatment services, thereby generating General Fund savings of \$293 million in 2008-09 and \$585 million in 2009-10 while maintaining program services. Specifically, these revenues will provide \$27 million for providing substance abuse services to CalWORKs participants, \$116 million for providing alcohol and drug treatment programs to individuals both in-prison and in parole settings, and \$150 million to the Department of Alcohol and Drug Programs to provide a variety of prevention and treatment services, including services currently provided pursuant to Proposition 36, the Drug Offender Treatment Program, and the Drug Medi-Cal program. By establishing this dedicated revenue source, the state can ensure that these critical programs continue to provide alcohol and drug prevention and treatment to California's most needy citizens.

EMPLOYEE COMPENSATION CHANGES

- Require state employees take a one day furlough each month between December 1, 2008 and June 30, 2010 This would result in a savings of approximately \$263 million General Fund in 2008-09 and \$451 million General Fund in 2009-10
- Eliminate two state holidays and premium pay for hours worked on all remaining holidays This would result in a savings of approximately \$39.4 million General Fund in 2008-09 and \$74.5 million General Fund in 2009-10
- Compute overtime based on actual time worked This change would result in a savings of approximately \$17.5 million General Fund in 2008-09 and \$30 million General Fund in 2009-10
- Establish alternative work schedules of ten hours per day, four days per week

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EXHIBIT 4



FINANCE

BULLETIN

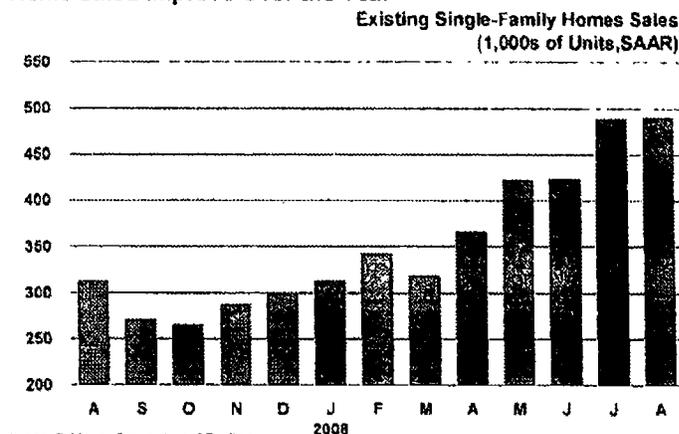
October 2008

ECONOMIC UPDATE

The ongoing housing and financial crises continued to roil the California economy in August. The state lost payroll jobs for the sixth consecutive month, and the unemployment rate rose again. Home building slowed, but home sales stabilized.

- California lost 7,700 nonfarm payroll jobs in August—about half of the 15,000 loss in July. The state lost jobs in seven out of the first eight months of 2008, and in 10 out of the last 12. Since nonfarm employment peaked in July 2007, the state has lost 83,700 jobs, or 6,440 per month on average.
- Only three of the state's major industry sectors gained jobs in August. Information added 9,400 jobs, educational and health services, 2,200, and leisure and hospitality, 1,900.
- Seven sectors lost jobs. The big losses were in trade, transportation, and utilities—6,400—and in government, where 6,000 jobs were dropped. Retail trade, the biggest component of trade, transportation, and utilities, lost 7,800. Elsewhere, financial activities lost 2,800 jobs, manufacturing, 2,400, construction, 2,000, professional and business services, 1,500, and other services, 100.
- Still burdened by ongoing housing troubles, California employment also dropped on a year-over-year basis. Nonfarm payroll employment fell by 72,700 jobs (0.5 percent) from August 2007 to August 2008. Six industry sectors gained jobs, led by a 50,200 gain in educational and health services. Employment also rose 26,300 in government, 14,100 in leisure and hospitality, 8,400 in professional and business services, 900 in natural resources and mining, and 500 in other services. Over the year, employment fell by 79,200 in Construction, 33,300 in Financial Activities, 28,800 in Manufacturing, 24,600 in Trade, Transportation, and Utilities; and 7,200 in Information.
- California's unemployment rate rose to 7.7 percent in August, up from a revised 7.4 percent in July, and up from 5.5 percent a year earlier. The 2.2 percentage point increase from August 2007 to August 2008 was the largest year-over-year increase since July 1991. However, as much as a third of that jump may have been due to the U.S. Bureau of Labor Statistics' practice—adopted in January 2005—of adjusting state unemployment estimates so that they add up to the national estimate. This "benchmarking" of states' unemployment estimates has resulted in a huge increase in the variability of California's unemployment statistics.
- Home building slowed considerably in August, with slowdowns in both single and multi-family home building. Residential permits were issued at a seasonally adjusted annual rate of 55,645 units, down over 56.2 percent from a year earlier. Single-family permits were down 55.0 percent, while multi-family permitting was down 57.4 percent. New home permitting during the first eight months of 2008 was down 43.8 percent from the same months of 2007 and down 60 percent from the same period of 2006.
- Nonresidential construction also slowed in August. Nonresidential construction permitting was down 21.9 percent in August from a year earlier. For the first eight months of 2008 as a whole, nonresidential permitting was down 5.5 percent from the same months of 2007.
- In August, California real estate markets basically moved sideways. Existing home sales and home prices were essentially unchanged from July. Sales of existing single-family detached homes totaled 490,850 units at a seasonally adjusted annualized rate, according to the California Association of Realtors. Inventories remained elevated—although much better than at the beginning of the year. The Association's unsold inventory index stood at 6.7 months in August for the second consecutive month. The median price of existing, single-family homes sold in August was \$350,140, essentially unchanged from July, but down 40.5 percent from August 2007.

Home Sales Improve Over the Year

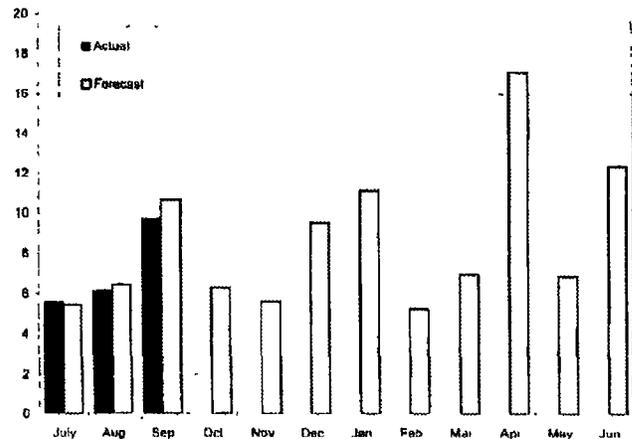


MONTHLY CASH REPORT

Preliminary General Fund agency cash for October was \$923 million below the 2009 Budget Act forecast of \$10.667 billion. September's revenues include the third estimated payments for personal income tax filers and calendar-year corporations. Year-to-date revenues are \$1.06 billion below the \$22.58 billion that was expected.

- Personal income tax revenues to the General Fund were \$289 million below the month's forecast of \$5.836 billion. Withholding was \$23 million above the estimate of \$2.543 billion but estimated payments showed significant weakness coming in \$337 million below the expected level of \$3.267 billion. Other receipts were \$35 million above the forecast of \$305 million and refunds were \$14 million above the projected level of \$175 million. Proposition 63 requires that 1.76 percent of total monthly personal income tax collections be transferred to the Mental Health Services Fund (MHSF). The amount transferred to the MHSF in July was \$4 million below the month's estimate of \$104 million. Year-to-date General Fund income tax revenues are \$98 million below estimate.
- Sales and use tax receipts were \$212 million below the month's forecast of \$2.249 billion. September represents the second prepayment for third quarter taxable sales. A more complete picture of third quarter sales activity will be available when final payments for the quarter are received in late October and early November. The shortfall in this revenue source can be attributed to the weak economy. Year-to-date, the sales tax cash is \$515 million below forecast.
- Corporation tax revenues were \$426 million below the month's estimate of \$2.238 billion. The loss was due to sagging prepayments, which were \$468 million lower than the forecast of \$2.095 billion. Other payments were \$18 million above the \$242 million that was expected and refunds were \$24 million below the projected level of \$99 million. Year-to-date revenues are \$428 million below estimate.
- Revenues from the insurance, estate, alcoholic beverage, and tobacco taxes were \$32 million above the month's estimate of \$185 million. The remaining revenues—pooled money interest income and "other" revenues—were \$28 million below the month's estimate of \$159 million.

General Fund Agency Cash
2008 Budget Act Forecast
(Dollars in Billions)



This bulletin reflects revenue receipts under the agency cash basis. Actual General Fund revenue receipts as posted by the State Controller's Office is generally different from the results from the agency cash revenue receipts due to timing. This is due to lags between the time tax agencies record tax payments and refunds, and the time these amounts are reported to and recorded by the Controller's Office accounts. For the month of September, the loss in the major three revenue sources is \$927 million under agency cash basis and \$814 million per the Controller's accounts – a difference of \$113 million. The Personal Income Tax accounts for \$19 million of the difference, the Corporation Income Tax accounts for \$10 million, and the Sales and Use Tax accounts for \$84 million. Sales tax cash numbers are often different because payments are due at the end of the month. In the preliminary Official Statement for the RANs offering, we note that the state's General Fund revenues on a budgetary basis could be adjusted downward by \$3 billion for this fiscal year. This projection is consistent with both the agency cash basis revenue receipts for September reported here as well as with the Controller's cash cited in the preliminary Official Statement.

2008-09 Comparison of Actual and Forecast Agency General Fund Revenues

(Dollars in Millions)

Revenue Source	SEPTEMBER 2008				2008-09 YEAR-TO-DATE			
	Forecast	Actual	Change	Percent Change	Forecast	Actual	Change	Percent Change
Personal Income	\$5,836	\$5,547	-\$289	-5.0%	\$11,491	\$11,393	-\$98	-0.9%
Sales & Use	2,249	2,037	-212	-9.4%	6,827	6,312	-515	-7.5%
Corporation	2,238	1,812	-426	-19.0%	2,659	2,231	-428	-16.1%
Insurance	145	180	35	24.1%	545	547	2	0.4%
Estate	0	\$0	0	0.0%	0	3	3	n/a
Pooled Money Interest	25	22	-3	-12.0%	75	81	6	8.0%
Alcoholic Beverages	30	27	-3	-10.0%	90	86	-4	-4.4%
Tobacco	10	10	0	0.0%	30	29	-1	-3.3%
Other (a)	134	109	-25	-18.7%	863	838	-25	-2.9%
Total	\$10,667	\$9,744	-\$923	-8.7%	\$22,580	\$21,520	-\$1,060	-4.7%

This is an agency cash report and the data may differ from the Controller's report to the extent that cash received by agencies has not yet been reported to the Controller. Except for estate & "other" revenues, revenues are ranked in descending order of fiscal year magnitude.

Totals may not add due to rounding. The forecast is from the 2008 May Revision updated for the 2008 Budget Act.

(a) The forecast for "other" revenues reflects actual cash for July and August.

EXHIBIT 5



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

11/06/2008

Special Session Proclamation 11/06/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by Section 3(b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California on the 6th day of November 2008, at a time to be determined, for the following purpose and to legislate upon the following subjects

- 1 To consider and act upon legislation to address fiscal and budget-related matters.
- 2 To consider and act upon legislation to address the economy, including but not limited to efforts to stimulate California's economy and create and retain jobs
- 3 To consider and act upon legislation to address the housing mortgage crisis.
- 4 To consider and act upon legislation to address the solvency of the Unemployment Insurance Fund



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed 6th day of November, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

EXHIBIT 6



GOVERNOR ARNOLD SCHWARZENEGGER

November 6, 2008

Dear Valued State Worker,

During the six weeks since I signed our state budget, the mortgage crisis has deepened, unemployment has increased and the stock market has dropped significantly. As a result, we are facing a projected \$11 billion revenue shortfall this fiscal year.

These dramatic developments require us to work together and respond immediately. I have called the Legislature into special session to address our fiscal emergency, and I am proposing a combination of economic stimulus measures, programs to keep Californians in their homes, revenue increases and spending reductions to address the real, immediate financial problems facing the state.

If approved by the Legislature, these spending reductions will impact our state workers. Californians rely on you to deliver important services every day, and I am proud of your hard work and dedication to the state. That's why I want you to hear about these impacts from me directly.

To achieve cost savings and protect vital state services, I am proposing the following measures:

- **Furloughs:** All state employees will be furloughed one day each month for the next year and half, a total of 19 days. This will result in a pay cut of about 5 percent. The pay cut will not affect retirement and other benefits for which you are eligible.
- **Holidays:** The Columbus Day holiday will be eliminated, and Lincoln's Birthday and Washington's Birthday will be observed together on Presidents Day. In addition, we will no longer pay time-and-a-half to employees working on holidays. Instead, employees required to work on holidays will receive holiday credit for use at another time, as they do now.
- **Four-day week.** The law will be amended to make it easier for departments to allow employees to work ten hours a day, four days a week.
- **Overtime:** The state will no longer count leave time (including sick leave and vacation time) as time worked for overtime purposes. Instead, employees will only become eligible for overtime pay once actual time worked exceeds the required threshold.

November 6, 2008

Page two

These changes will save the state roughly \$1.4 billion over two years. I know these are not easy proposals, and I assure you we are working closely with union leadership to achieve results in the least painful way possible. All the actions we're proposing must first be approved by the Legislature.

I've always said that California has the most talented and most diligent state employees, and I am confident we will make it through this tough time by working together. Thank you for your cooperation and hard work on behalf of the State of California.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger", written in a cursive style.

Arnold Schwarzenegger

EXHIBIT 7

CASE California Attorneys, Administrative Law Judges and Hearing Officers in State Employment

Home > Public Information & Announcements

Also see: CASE Litigation, Interested in becoming a State Attorney or ALJ?, Media & News Inquiries

Public Information & Announcements

CASE Files Petition for Writ of Mandate and Complaint for Declaratory Relief Posted: January 6, 2009

CASE Files Petition for Writ of Mandate and Complaint for Declaratory Relief

CASE Files Petition for Writ of Mandate and Complaint for Declaratory Relief

On January 5, 2009, CASE filed a Petition for Writ of Mandate and a Complaint for Declaratory and Injunctive Relief against Governor Schwarzenegger and his administration in the Sacramento County Superior Court. Our lawsuit seeks a declaration that the Governor has no authority to unilaterally impose furloughs on State employees, an injunction prohibiting the Governor or any other State officer from implementing the furloughs, and a declaration that any attempt to furlough State employees who are exempt from the Fair Labor Standards Act ("FLSA") would result in the loss of the FLSA exemption to the employer. Copies of the pleadings are available by selecting the link below.

CASE is aware of the fact that California is facing an unprecedented financial crisis. However, it is unconscionable for Governor Schwarzenegger to attempt to remedy California's budget woes through the use of "emergency powers" by placing an unfair burden on the back of its legal professionals. This is especially true given the fact that Governor Schwarzenegger has created his own emergency by refusing to sign the comprehensive budget package passed by the Legislature on December 18, 2008.

As CASE has consistently argued, the members of Bargaining Unit 2 have financially contributed to the State for many years in the form of salaries that are 25% to 50% below where they should be. Furthermore, there are numerous legal, practical, and political problems with Governor Schwarzenegger's proposed course of action, not the least of which is that it does not appear Governor Schwarzenegger has the legal authority to unilaterally impose furloughs, as such an act would violate our existing contract with the State of California. The Governor's virtual disregard of the collective bargaining process has effectively precluded CASE from presenting less drastic alternatives to "hard" furloughs, such as voluntary early retirement programs, voluntary conversions to part-time work schedules, and/or "soft" furloughs, where employees are furloughed but compensated for the unpaid time in the future with deferred payments or leave credits. Moreover, under the FLSA, the State cannot furlough exempt employees (and all Unit 2 attorneys are exempt) without losing its exempt status, which would expose the State to the very real possibility of having to pay its employees their normal rate of pay plus overtime.

CASE is committed to opposing the Governor's ill-advised proposal in every available forum, and will keep you updated as information becomes available. If you have any specific questions, please direct them to info@calattorneys.org.

As always, thank you for your support of CASE and your colleagues in Bargaining Unit 2.

EXHIBIT 8

Republican proposal would slash vital state services

As *Update* goes to press the Republicans are releasing a one-sided budget plan that calls for billions more in funding cuts for vital state services and reduces worker protections

Local 1000 is launching a campaign to obtain funding for state services as part of the federal economic stimulus package, but this Republican proposal may keep Californians from getting that relief.

Republican legislators appear ready to risk crucial state services for Californians by refusing to consider any budget compromise that includes cutting tax loopholes

for the wealthy or raising the alcohol tax. The Republican proposals would also restrict the ability of workers to earn overtime.

"The budget deficit is getting worse every day and the Republicans need to stop playing games with workers' rights and join everyone else in finding a comprehensive budget solution," said Cindie Fonseca, chair of our Professional Educators and Librarians (Unit 3).

Local 1000 has called for a comprehensive solution, including a series of other funding measures such as raising the alcohol tax by a "nickel a drink," going after tax

scofflaws and cutting hundreds of millions in wasteful information technology contracts for well-connected private firms.

"The state has already laid off 10,000 temporary workers so before legislators consider layoffs and furloughs, they need to get rid of expensive private contractors who do work that state employees perform more effectively at lower cost," Fonseca said.

If there is no compromise on the \$14 billion deficit by early January, California would have to pull the plug on about \$5 billion in upcoming public works projects such as hospitals, roads and

levies. Republican resistance to compromise may also hinder California's ability to get billions from the federal economic stimulus package.

"We need to have everyone, the unions, the governor and the legislature conveying the same message to Washington in order to get economic stimulus funds," Local 1000 President Yvonne Walker said. "California is headed over a cliff. The governor and the legislature need to work at this 24 hours a day until they reach a resolution."

To see updated news on the state budget go to seiu1000.org and watch the Channel 1000 News.

Local 1000 wins outsourcing battle Board cancels "proprietary" computer contract at DGS

Local 1000 has won another big victory in our campaign to prevent the costly outsourcing of information technology jobs that can be done at half the cost by state workers. On Dec. 2, the full State Personnel Board upheld a ruling that disapproves an IT software contract between the Department of General Services (DGS) and Valley Oak Systems Inc.

The Board's decision brings an end to Local 1000's challenge to five IT contracts – our attorneys won four cases. The disapproved contracts were valued at \$448 thousand. DGS chose to appeal only the Valley Oaks case to the full board, claiming that the program which

was serviced under that contract was custom and "proprietary."

"DGS's continued failure to train existing staff to maintain proprietary programs and then argue they have to outsource maintenance at double the cost is an outrageous waste of taxpayer money."

—Margarita Maldonado
Chair, Bargaining Unit 1

However, the full SPB agreed with Local 1000 attorneys that the Valley Oaks contract was not written to service

a proprietary program. It was written as what has become a boilerplate maintenance and service contract with help-desk services. In fact the word "proprietary" never appeared in the contract.

"DGS's continued failure to train existing staff to maintain proprietary programs and then argue they have to outsource maintenance at double the cost is an outrageous waste of taxpayer money," said Margarita Maldonado, chair of Bargaining Unit 1 and an associate information systems analyst at the Department of Justice. "DGS has known since 2003 – a full five years – that they needed to train workers."

Watch the Channel 1000 News online 24/7 at seiu1000.org

KNOW YOUR RIGHTS

YOUR UNION CONTRACT PROTECTIONS

Article 6 - Grievance and Arbitration

Your union contract contains hundreds of provisions designed to protect your rights. Article 6 – Grievance and Arbitration – defines a grievance as a dispute involving the interpretation and enforcement of the terms of the contract, and guarantees your right to fair and timely resolution.

Grievances should be discussed informally with the employee's immediate supervisor who must give a response within seven calendar days.

Step 1: If an informal grievance is not resolved satisfactorily, a formal grievance may be filed in writing no later than twenty-one calendar days after the event being grieved.

- Written grievances must include a description of the alleged violation, the specific act(s) causing the violation, and the specific remedy being sought.
- The department must respond in writing within twenty-one calendar days of receipt of the formal grievance.

Step 2: If the grievant is not satisfied with the written response, a written appeal may be filed with the department within twenty-one calendar days after receipt of the written response. The department must respond in writing to the appeal, with a copy sent concurrently to Local 1000 headquarters.

Step 3: If the grievant is not satisfied with the decision rendered at Step 2, an appeal may be filed within 30 days to the Department of Personnel Administration (DPA). A response is due from DPA within 30 days.

Step 4: If the grievance is not resolved at Step 3, Local 1000 has the right to submit the grievance to arbitration. An arbitrator will be mutually selected by DPA and Local 1000.

How to take Action

Contact your Local 1000 steward if you feel your rights have been violated. Your steward will work with you and management to determine the best course of action. Remember – grievances must be filed within twenty-one calendar days from occurrence in order to be considered. For more information regarding Article 6 – Grievance and Arbitration, review your contract by visiting www.seiu1000.org

Bargaining resumes Jan. 5

Our bargaining team will return to the table beginning in January. Both Master Table and unit bargaining is expected to begin the week of Jan. 5, but exact times and dates have not been set.

Local 1000's contract expired on June 30, provisions of the old contract remain in effect.

Our team has been bargaining steadily with the state since May and we have signed more than 400 tentative agreements, mainly dealing with non-economic issues.

The Statewide Bargaining Advisory Committee plans to meet Jan. 9-12 and will review the status of bargaining and the state budget.

Delegate nomination process begins for General Council

Council meets Labor Day weekend in L.A.

The Local 1000 Election Committee is beginning the work of administering the elections for delegates to the 2009 General Council in Los Angeles. Nomination forms for the delegate election will be arriving at each member's home by mail during the first week of January.

General Council is the policy making body for the California State Employees Association (CSEA) and is made up of delegates from all CSEA affiliates – Local 1000, the California State University Employees Union (SEIU Local 2579), the Association of California State Supervisors and the CSEA Retirees.

Each Local 1000 District Labor Council is entitled one delegate per 100 members. This has ranged from 8-19 delegates.

At the General Council, all delegates vote to elect CSEA officers, adopt the association's three-year budget, and accept or reject proposed changes to the organization's bylaws. At that time, Local 1000 delegates will also vote on the three-year budget for Local 1000.

General Council will be held in Los Angeles during the Labor Day weekend, Sept. 4-7, 2009.

For further information go the delegate elections page at seiu1000.org or e-mail local1000Elections@seiu1000.org

Mileage rate to drop in 2009

On Jan. 1, the state's standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be reduced to 55 cents per mile for business miles driven. Under your Local 1000 contract, state workers receive the federal Internal Revenue Service rate.

FOR MORE INFORMATION, CALL LOCAL 1000 TOLL FREE (866) 471-SEIU (7348) or visit our website www.seiu1000.org

SACRAMENTO (916) 554-1200 • OAKLAND (510) 452-4357 • SAN DIEGO (619) 624-0515

LOS ANGELES (323) 525-2970 • RANCHO CUCAMONGA (909) 466-5044 • FRESNO (559) 226-0756



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EXHIBIT 9

[Home](#) | [In the News](#) | [Hotline](#)

Weekly Update January 9, 2009

Budget negotiations between the Governor and Democratic Legislative leadership broke down earlier this week. The Governor's demands for an agreement on even partial relief of the \$42 billion General Fund Budget deficit centered on outsourcing (unlimited authority for design build and public-private partnerships), state employees (authorizations for furloughs), and environmental (exemptions of some projects from the California Environmental Quality Act requirements). While Democrats made some concessions, it either wasn't enough or the Governor changed and increased his demands. However, a broad spectrum of labor organizations has been meeting with legislative leadership to coordinate efforts on budget needs and the Governor's positions on various issues. The Governor's preliminary budget proposal from last week will probably be the same as his official proposal (if indeed he makes another one). His State of the speech will be delivered at 10 a.m. on Thursday, January 15.

The Governor vetoed the Democrats \$18 billion package of bills to partially relieve the \$40 billion deficit. As a direct result, the state is running out of cash and State Controller John Chiang has been forced to stop payments to some construction contractors. He says the state will really run out of money in February, which will make paying its bills difficult if not impossible. What effect this will have on paychecks if the Governor of Legislature doesn't do something between now and then is unclear but is a serious concern. We are working with everyone involved to try to fix the problem.

PECG was in court this morning (Friday, January 9) to ask the Judge to expedite a hearing on PECG's lawsuit challenging the Governor's Executive Order to furlough state employees two days per month. Ironically, the Governor outsourced his defense of his actions to a high profile private law firm in Sacramento, rather than using any of the 2,000 state attorneys he plans to furlough. Judges for these cases are drawn by chance and the assigned Judge was Lloyd Connelly, a former Democratic legislator and experienced judge. Each side gets one challenge so the state challenged Judge Connelly as being biased. As a result, Judge Marlette was assigned to hear the case.

The Judge ruled that the case will be heard on January 29. Two other unions also filed suit, so their argument will be heard at the same time.

Mark Miller, PECG's Corporate Vice President, Supervisory, presented DPA Director Dave Gilb with petitions signed by more than 1300 PECG-represented supervisors and managers, asking the DPA Director to implement the pay raises for supervisors and managers in the same manner as those received by Unit 9 employees whom they supervise.

EXHIBIT 10



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

12/01/2008

Fiscal Emergency Proclamation 12/01/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, it is estimated that there will be a General Fund revenue shortfall of at least \$11.2 billion for the 2008-09 fiscal year. Additionally, the weakening economy will increase the expenditures for health and social services beyond what is provided for in the Budget Act; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces, and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS immediate and comprehensive action is needed to address the revenue shortfall facing the State of California; and

WHEREAS within months the State will not be able to meet all of its expenses, outside of debt service, without immediate and comprehensive action; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars that will occur in July and August, thus making it likely that this fiscal year's deficit will cause the State to miss payroll and school payments at the beginning of 2009; and

WHEREAS, according to the Legislative Analyst, next fiscal year's budget will be even more out of balance than the current year budget and balancing the 2009/2010 budget will be immeasurably more difficult if actions to reduce spending trends and increase revenue trends are not put into place immediately,

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with Section 10(f) of Article IV of the Constitution of the State of California, **HEREBY DETERMINE** that General Fund revenues for Fiscal Year 2008-09 will decline substantially below the estimate of General Fund revenues upon which the 2008 Budget Act was based.

I, ARNOLD SCHWARZENEGGER, Governor of the State of California, **HEREBY DECLARE** that a fiscal emergency exists

I, ARNOLD SCHWARZENEGGER, Governor of the State of California, **HEREBY IDENTIFY THE NATURE OF THIS FISCAL EMERGENCY** to be the projected budget imbalance and insufficient cash reserves for Fiscal Year 2008-09 and the projected insufficient cash reserves and potential budgetary and cash deficit in Fiscal Year 2009-10 which are anticipated to result from the dramatically lower than estimated General Fund revenues in Fiscal Year 2008-09.

FURTHER, on this day, as required by Section 10(f) of Article IV of the Constitution of the State of California, I will cause the Legislature to assemble in special session to address this fiscal emergency, and I will submit to the Legislature proposed legislation to address this fiscal emergency



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 1st day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

EXHIBIT 11



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR**EXECUTIVE ORDER S-16-08**

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009, and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis, and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009, and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis, and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009, and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year, and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its

obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately.

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

EXHIBIT 12

CONTROLLER JOHN CHIANG
STATE OF CALIFORNIA

300 Capitol Mall
Sacramento, CA 95814
916 445.2636
www.controller.ca.gov

PR08:066
FOR IMMEDIATE RELEASE:
DECEMBER 19, 2008

CONTACT: HALLYE JORDAN
916-445-2636

**Chiang Issues Statement on Governor's
Executive Order Requiring State Employee
Furloughs and Layoffs**

SACRAMENTO – Controller John Chiang today issued the following statement in response to Governor Schwarzenegger's executive order to implement furloughs and layoffs:

"This is one of many painful results stemming from the inability of the Governor and Legislature to agree on responsible solutions to our chronic fiscal crisis, and more painful realities are on their way. It is clear that the Governor's executive order would hurt public servants, and in turn adversely impact our economy and slow its recovery.

"I await the Department of Personnel Administration's plan on how to implement this executive order. The only hope for reversing our financial course is for the Governor and Legislature to work together to enact a balanced budget that stops us from running out of cash in late February."

###

EXHIBIT 13



JOHN CHIANG
California State Controller

December 22, 2008

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

The Honorable Darrell Steinberg
President pro Tem
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Karen Bass
Speaker of the Assembly
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Dave Cogdill
Senate Republican Leader
State Capitol, Room 305
Sacramento, CA 95814

The Honorable Michael Villines
Assembly Republican Leader
State Capitol, Room 3104
Sacramento, CA 95814

Dear Governor Schwarzenegger and Legislative Leaders:

I am writing to underscore the stark reality that, if current projections hold true, the State is less than seventy days from running out of cash. Worse, my office's analyses indicate there will be no shelter from the storm as the State's cash position will remain negative throughout the remainder of the fiscal year.

As I indicated during the recent Joint Legislative Budget Session, the failure of the Governor and the Legislature to quickly arrive at an agreement to responsibly address the State's \$41 billion budget crisis would begin a cascading series of regrettable actions necessary to conserve the State's dwindling cash reserves. However, these cash-preserving options no doubt will have the unintended effect of deepening and prolonging the recession

that has already crippled our State's economy. The first of those actions were made last week:

- The Pooled Money Investment Board was forced to shut off the flow of \$3.8 billion in loans to approximately 2,000 critical infrastructure projects. That action is expected to cost the state 200,000 private sector jobs and the loss of \$12.5 billion to our economy.
- Last Friday, the Governor ordered mass layoffs and unpaid furloughs starting in February for nearly 250,000 state public servants, including nursing home inspectors, peace officers, and auditors charged with identifying fraud, waste, and abuse.

Unless adequate budget and cash solutions are fashioned in the next several weeks, the list of casualties will only multiply in the weeks and months ahead.

Specifically, my office will be forced to pursue the deferral of potentially billions of dollars in payments and/or the issuance of individual registered warrants, commonly referred to as IOUs. In order to ensure that the State can meet its Constitutionally-required obligation to schools and debt service, the Capitol's budget paralysis may leave me no choice but to, in full or in part, withhold payments or to issue IOUs to other individuals and entities entitled to state payments. Given the current financial instability of the banking industry, it is highly unlikely that the banks, if they accept the IOUs at all, will be able to do so for any sustained period of time. Consequently, the recipients of the registered warrants may have no apparent options but to hold them until redemption.

While I hope that reasonable minds and a shared desire to responsibly steer the State away from the worst fiscal crisis since the Great Depression will produce the necessary solutions in the days ahead, I must continue to make preparations for the impending cash crunch. These plans will be outlined for you shortly after the formal release of the Governor's January spending plan.

I also have directed my staff to immediately accelerate the efforts necessary to issue a Revenue Anticipation Warrant (RAW), a rarely-used and extremely costly form of external borrowing. However, given the strained condition of the financial markets, the lack of market liquidity and the current condition of the State's finances, this type of financing may not be possible. A high risk of failure exists even assuming the imposition of high fees and that the Legislature adopts triggered spending reductions and/or tax increases that likely would be necessary to ensure that money is available to allow us to repay a RAW at maturity.

The State's dire cash position not only jeopardizes and places at risk our ability to meet our financial obligations in a timely manner, it threatens our ability to respond to natural disasters and protect our communities from crime. I cannot stress enough the crisis we are

The Honorable Governor Schwarzenegger and Legislative Leaders
December 22, 2008
Page 3

facing. Without action by the Legislature and the Governor, we literally are weeks away from a meltdown of State government that threatens the delivery of critical public services our citizens deserve and expect.

Sincerely,

Original signed by:

JOHN CHIANG
California State Controller

Cc: Members of the State Legislature
Bill Lockyer, California State Treasurer
Mike Genest, Director, Department of Finance
Mac Taylor, Legislative Analyst

EXHIBIT 14

California at the Brink of Financial Disaster

Michael C. Genest
Director of Finance
State of California

\$41.6 Billion of Budget Deficit

(General Fund in Billions)

Carry Forward Deficit -14.8

Revenues and Transfers 86.3

Total Available Resources \$71.5

Target Reserve 2.0

Expenditures 111.1

2009-10 Budget Deficit -41.6

What Happens When the State "Runs Out of Money"?

(Amounts in Billions)

	Jan	Feb	Mar	Apr	May	Jun	Jul
Beginning Balance With Borrowables	\$3.7	\$3.2	-\$0.5	-\$4.2	-\$3.5	-\$4.4	-\$3.7
Receipts	7.8	5.3	4.9	11.8	5.8	6.9	5.8
Disbursements	3.3	9.0	8.6	11.1	6.7	6.2	12.5
Ending Cash Balance Including Borrowables	3.2	-0.5	-4.2	-3.5	-4.4	-3.7	-10.4
General Fund Cash Balance	-\$11.8	-\$15.6	-\$18.8	-\$18.0	-\$19.2	-\$18.4	-\$26.3

Who Will and Who Won't Be Paid?

Will Pay

Public Schools
Debt Service, GO and Lease Revenue
Repayments to Special Funds
Payroll and Benefits
Medi-Cal Claims
RANs Repayment

Will Not Pay

Tax Refunds
Vendors
Social Services Payments to Counties
Healthy Families Program
Developmental Services - Regional and Developmental Centers
Mental Health Programs
Cal Grants

Infrastructure Projects Will Stop

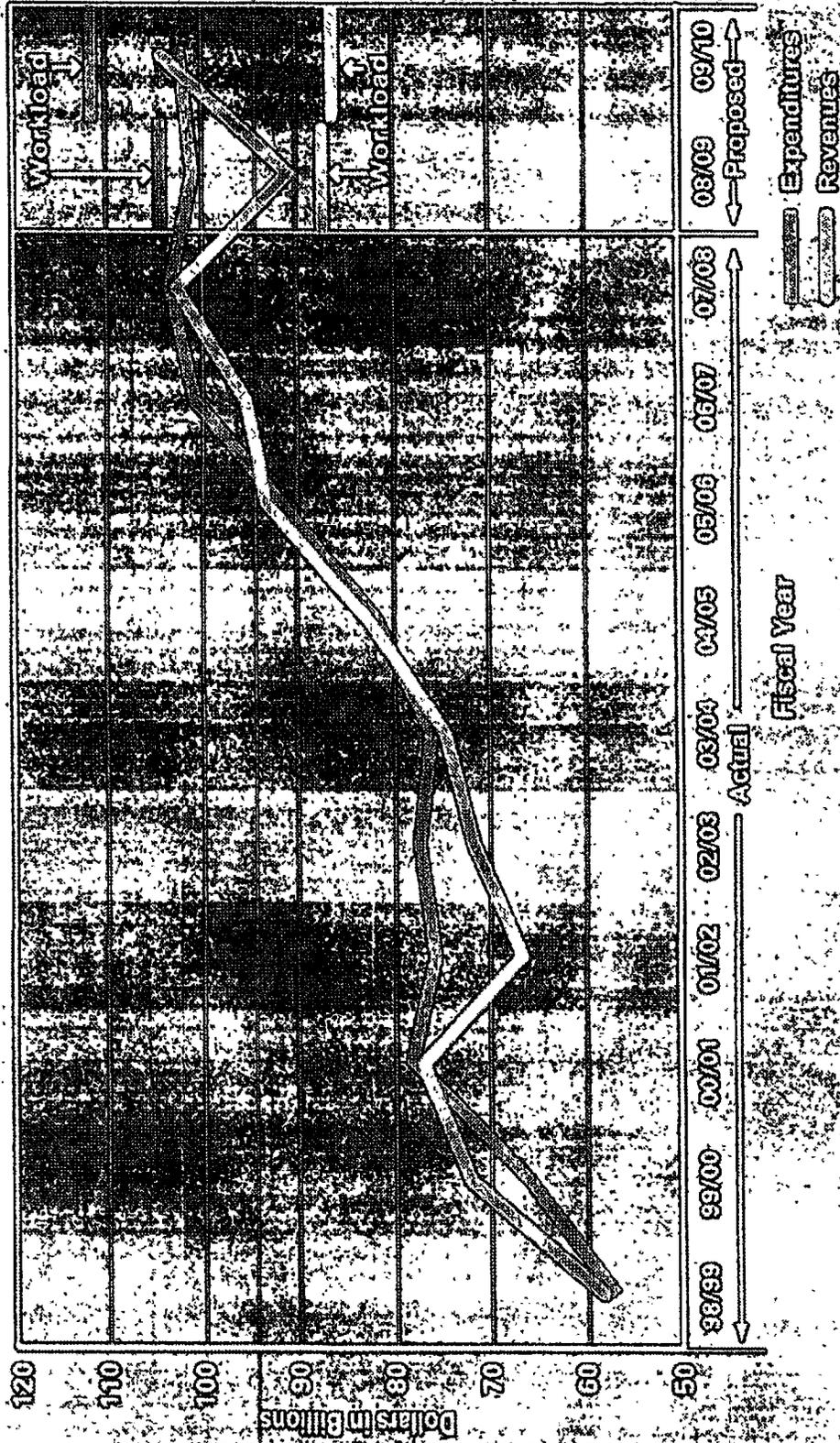
Over 5,700 infrastructure projects are at risk including

- 1,411 K-12, community college and university projects
- 203 transportation projects
- 481 flood control and water projects
- 671 housing projects

The value of all those projects exceeds \$22.5 billion

Shutting down these projects will result in closure costs and penalties that could be hundreds of millions of dollars

How Did We Get Into This Mess?



California State Department of Finance

How Did We Get Into This Mess?

Average Annual Growth from 1998-99 to 2009-10 Governor's Budget

Major General Fund Programs	Average Annual Percentage Growth
Prop 98	4.6%
Base	2.7%
VLF Tax Cut	Did not exist in 1998-99
ERB Triple Flip	Did not exist in 1998-99
Corrections	6.3%
Higher Education (excluding Comm. Colleges)	2.5%
Med-Cal	6.4%
SSI/SSP	1.5%
Developmental Services	13.1%
Mental Health	9.5%
CalWORKS	0.0%
IHSS	11.2%
Other HHS	4.3%
Prop 42	Did not exist in 1998-99
Courts	9.7%
Debt Service/Pension Contribution/Other Non-Discretionary	10.1%
Total	4.7%

What Do We Propose To Do About It?

(Dollars in Billions)

	December 19 Special Session Proposals	Additional Special Session Proposals	Proposals to be Enacted By July 1	Total
Expenditure Reductions	\$9,811 44%	\$4,049 87%	\$3,567 24%	\$17,427 42%
Revenues	12,505 56%	236 5%	1,545 10%	14,286 34%
Lottery	0 0%	0 0%	5,001 34%	5,001 12%
Borrowing	0 0%	358 8%	0 0%	358 1%
RAWS	0 0%	0 0%	4,673 32%	4,673 11%
Total	\$22,316 100%	\$4,643 100%	\$14,786 100%	\$41,745 100%

What Do We Propose To Do About It?

Cuts

(Dollars in Millions)

Program Area	2008-09 and prior	2009-10	Two-Year Total
Health and Human Services	\$461.8	\$4,332.5	\$4,794.3
Corrections and Rehabilitation	85.1	960.5	1,045.6
K-14 Education	5,027.8	2,683.2	7,711.0
Higher Education	132.2	725.0	857.2
Employee Compensation	414.6	1,283.5	1,703.1
Other	339.4	976.8	1,316.2
Total	\$6,460.9	\$10,966.4	\$17,427.4

What Do We Propose To Do About It?

Revenues

(Dollars in Millions)

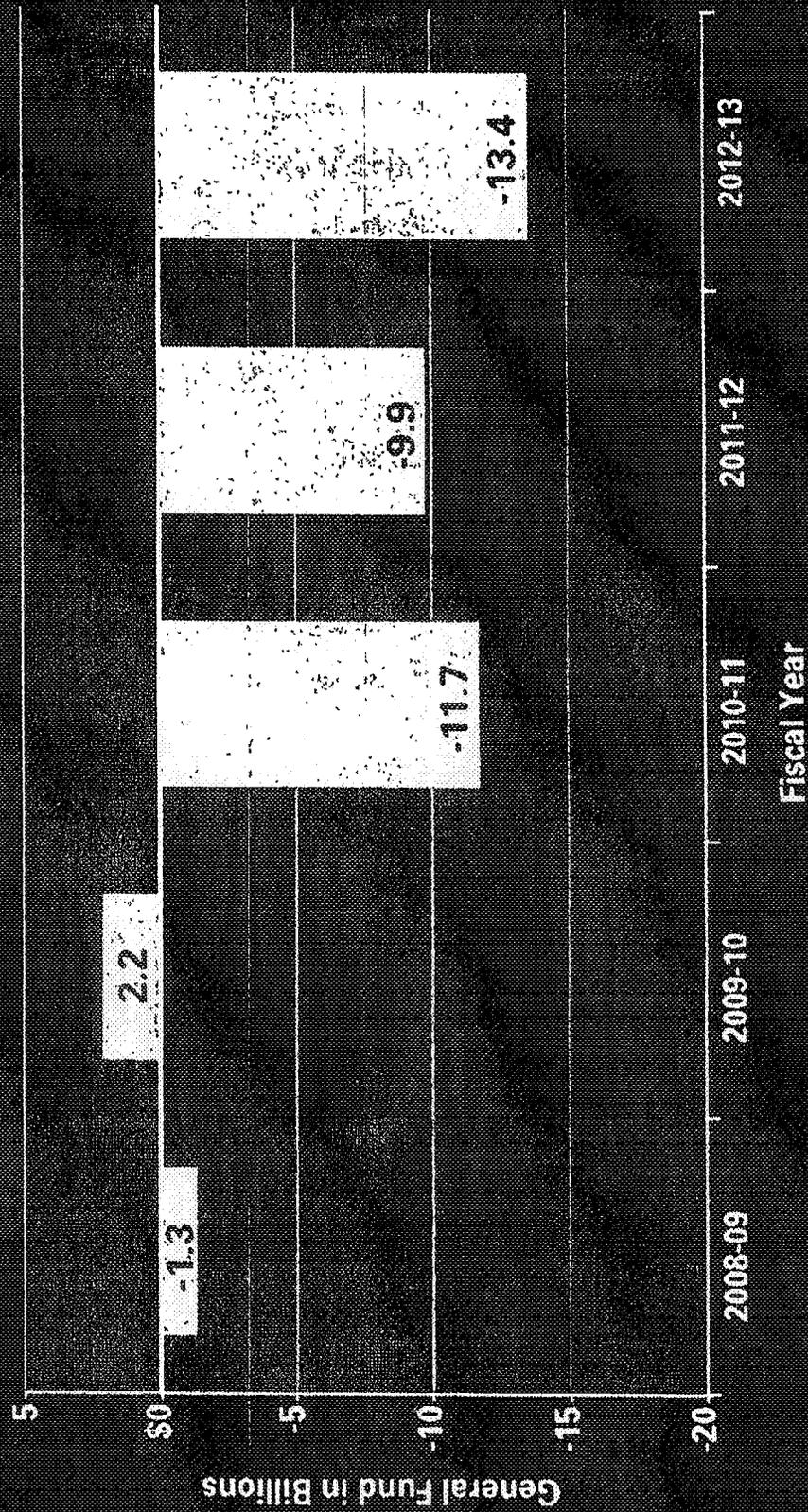
Program Area	2008-09 and prior	2009-10	Two-Year Total
Temporary 1.5 cent Sales Tax Increase*	\$2,350.0	\$6,758.0	\$9,108.0
Sales Tax on Selected Services*	272.4	1,110.9	1,383.3
Reduce Dependent Exemption Credit	0.0	1,440.0	1,440.0
Oil Severance Tax**	348.2	836.4	1,184.6
Nickel a Drink Alcohol Tax Increase	244.0	585.0	829.0
Special Fund Loans and Transfers	399.0	195.2	594.2
Other	0.0	2.8	2.8
Total	\$3,613.6	\$10,928.3	\$14,541.9

* Net of Prop 42 revenues

** Net of Costs and Tidelands Revenue reduction

California State Department of Finance

Do The Solutions Hold Up?



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6 K. WILLIAM CURTIS
7 Chief Counsel, State Bar No. 095753
8 WARREN C. STRACENER
9 Deputy Chief Counsel, State Bar No. 127921
10 LINDA A. MAYHEW
11 Assistant Chief Counsel, State Bar No. 155049
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Attorneys for Defendants ARNOLD SCHWARZENEGGER,
Governor; STATE OF CALIFORNIA; DAVID GILB and
DEPARTMENT OF PERSONNEL ADMINISTRATION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

18 PROFESSIONAL ENGINEERS IN
19 CALIFORNIA GOVERNMENT;
20 CALIFORNIA ASSOCIATION OF
21 PROFESSIONAL SCIENTISTS,
22
23 Petitioners/Plaintiffs,
24
25 v.
26 ARNOLD SCHWARZENEGGER, Governor;
27 STATE OF CALIFORNIA; DEPARTMENT
28 OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,
Respondents/Defendants.

AND RELATED CASES

FILED/ENDORSED
JAN 20 2009
By: A. WOODWARD
Deputy Clerk

CASE NO. 34-2008-80000126-CU-WM-GDS
**Assigned For All Purposes To The Honorable
Patrick Marlette**
PROOF OF SERVICE
Date January 29, 2009
Time: 9:00 a.m.
Dept.: 19
Action Filed: December 22, 2008
Trial Date: None Set

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I, May Marlowe, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 20, 2009, I served a copy of the following document(s):

- RESPONDENTS' OPPOSITION TO PETITIONERS' PETITIONS FOR WRIT OF MANDATE IN CONSOLIDATED ACTIONS;**
- DECLARATION OF DAVID W. TYRA;**
- DECLARATION OF JULIE CHAPMAN;**
- DECLARATION OF ALENE SHAMAZU;**
- DECLARATION OF BERNICE TORREY;**
- DECLARATION OF DIRECTOR OF FINANCE MICHAEL C. GENEST;**
- EVIDENTIARY OBJECTION TO DECLARATION OF PETER FLORES, JR.**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Attorneys for Petitioners/Plaintiffs California
Attorneys, Administrative Law Judges and
Hearing Officers in State Employment
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 Patrick J. Whalen, Esq.
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 Fax: (916) 448-5346
 Email: counsel@calattorneys.org

Attorney for Respondent/Defendant State
Controller John Chiang
 Rick Chivaro, Esq.
 Ronald V. Placet, Esq.
 Shawn D. Silva, Esq.
 Ana Maria Garza, Esq.
 OFFICE OF THE STATE CONTROLLER
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 Sacramento, CA 95814
 Fax: (916) 322-1220
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1 **Attorneys for Petitioner/Plaintiff SEIU, Local**
2 **1000**

3 Paul E. Harris, III, Esq.
4 Anne Giese, Esq.
5 J. Felix De La Torre, Esq.
6 Brooke D. Pierman, Esq.
7 SERVICE EMPLOYEES INTERNATIONAL
8 UNION LOCAL 1000
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10 Sacramento, CA 95814
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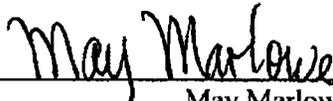
Attorneys for Petitioners/Plaintiffs
Professional Engineers In California
Government and California Association of
Professional Scientists

Gerald James, Esq.
660 J Street, Suite 445
Sacramento, CA 95814
Fax: (916) 446-0489
Email: gjames@cwo.com

13 I am readily familiar with the firm's practice of collection and processing correspondence
14 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
15 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
16 motion of the party served, service is presumed invalid if postal cancellation date or postage
17 meter date is more than one day after date of deposit for mailing in affidavit.

18 I declare under penalty of perjury under the laws of the State of California that the above
19 is true and correct.

20 Executed on January 20, 2009, at Sacramento, California.

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May Marlowe

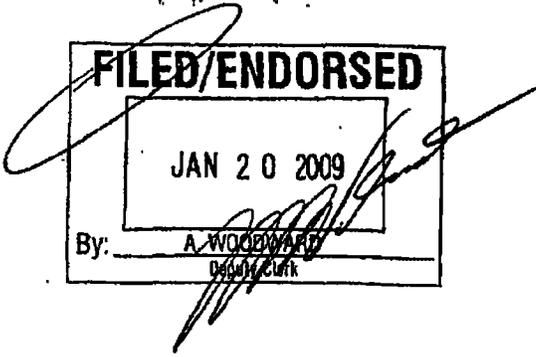
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7 Chief Counsel, State Bar No. 095753
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Attorneys for Defendants ARNOLD SCHWARZENEGGER,
Governor; STATE OF CALIFORNIA; and DEPARTMENT OF
PERSONNEL ADMINISTRATION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

18 PROFESSIONAL ENGINEERS IN
19 CALIFORNIA GOVERNMENT;
20 CALIFORNIA ASSOCIATION OF
21 PROFESSIONAL SCIENTISTS,
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23 Petitioners/Plaintiffs,
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25 v.
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27 ARNOLD SCHWARZENEGGER, Governor;
28 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,
Respondents/Defendants.



CASE NO. 34-2008-80000126-CU-WM-GDS
**DECLARATION OF DIRECTOR OF
FINANCE MICHAEL C. GENEST**
Dept.: 19
Action Filed: December 22, 2008
Trial Date: None Set

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I, MICHAEL C. GENEST, declare as follows:

1. I was appointed by Governor Arnold Schwarzenegger on December 1, 2005, as Director of the California Department of Finance. The mission of the Department of Finance is to serve as the Governor's chief fiscal policy advisor, promote responsible resource allocation through the state's annual financial plan, and ensure the financial integrity of the state.

2. I make this declaration in support of this action.

3. The state is currently facing a massive fiscal crisis and is on the brink of financial disaster.

4. Baseline revenues are now expected to be \$14.5 billion below the estimate at the time the 2008-09 Budget was enacted.

5. There is a projected budget deficit of approximately \$14.8 billion for this fiscal year. Without immediate corrective action, it is projected that the budget deficit will grow to \$41.6 billion dollars by the end of June 2010.

6. Without corrective action, baseline General Fund revenues in 2009-10 are expected to decline to \$86.3 billion. This translates to the total budget gap being 48% of the projected baseline General Fund revenues.

7. The Department of Finance works with the State Controller's Office and the State Treasurer's Office every year to determine whether, on a monthly basis, the state will have sufficient cash attributable to the General Fund to meet the state's obligations, including its obligations to its bondholders.

8. In addition to the budget crisis, the state faces a cash-flow crisis. Without an immediate legislative solution, it is anticipated that the state will lack sufficient cash to pay all of its obligations as soon as February.

9. The state is anticipating that there will be a General Fund cash balance of negative \$11.8 billion by the end of January and without immediate corrective actions the General Fund balance at the end of the fiscal year will be negative \$18.4 billion. The forecast for the end of July anticipates a negative General Fund cash balance of \$26.3 billion.

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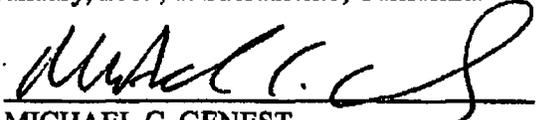
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10. I have personal knowledge of the facts stated in this declaration, and if called as a witness I could and would competently testify to them.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 16th day of January, 2009, at Sacramento, California.


MICHAEL C. GENEST

1 DAVID W. TYRA, State Bar No. 116218
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
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Attorneys for Defendants ARNOLD SCHWARZENEGGER,
Governor; STATE OF CALIFORNIA; DAVID GILB and
DEPARTMENT OF PERSONNEL ADMINISTRATION

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

Respondents/Defendants.

AND RELATED CASES

FILED/ENDORSED

JAN 20 2009

By: A. WOODWARD
Deputy Clerk

CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

PROOF OF SERVICE

Date January 29, 2009

Time: 9:00 a.m.

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I, May Marlowe, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 20, 2009, I served a copy of the following document(s):

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DECLARATION OF JULIE CHAPMAN;

DECLARATION OF ALENE SHAMAZU;

DECLARATION OF BERNICE TORREY;

DECLARATION OF DIRECTOR OF FINANCE MICHAEL C. GENEST;

EVIDENTIARY OBJECTION TO DECLARATION OF PETER FLORES, JR.

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Attorneys for Petitioners/Plaintiffs California Attorneys, Administrative Law Judges and Hearing Officers in State Employment

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Attorneys for Petitioner/Plaintiff SEIU, Local 1000

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Brooke D. Pierman, Esq.
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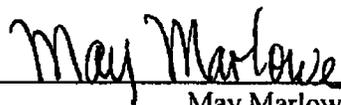
Attorneys for Petitioners/Plaintiffs Professional Engineers In California Government and California Association of Professional Scientists

Gerald James, Esq.
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Sacramento, CA 95814
Fax: (916) 446-0489
Email: gjames@cwo.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

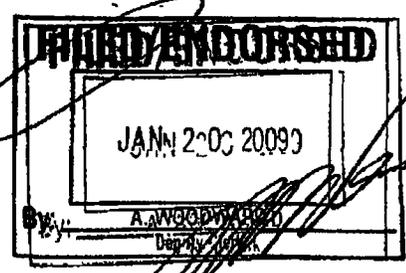
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 20, 2009, at Sacramento, California.



May Marlowe

1 DAVID W. TYRA, State Bar No. 116218
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
4 A Law Corporation
5 400 Capitol Mall, 27th Floor
6 Sacramento, California 95814
7 Telephone: (916) 321-4500
8 Facsimile: (916) 321-4555
9 E-mail: dtyra@kmtg.com



6 K. WILLIAM CURTIS
7 Chief Counsel, State Bar No. 095753
8 WARREN C. STRACENER
9 Deputy Chief Counsel, State Bar No. 127921
10 LINDA A. MAYHEW
11 Assistant Chief Counsel, State Bar No. 155049
12 WILL M. YAMADA
13 Labor Relations Counsel, State Bar No. 226669
14 DEPARTMENT OF PERSONNEL ADMINISTRATION
15 1515 S Street, North Building, Suite 400
16 Sacramento, CA 95811-7258
17 Telephone: (916) 324-0512
18 Facsimile: (916) 323-4723
19 E-mail: WillYamada@dpa.ca.gov

Attorneys for Defendants ARNOLD SCHWARZENEGGER,
Governor; STATE OF CALIFORNIA; and DEPARTMENT OF
PERSONNEL ADMINISTRATION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

Respondents/Defendants.

CASE NO. 34-2008-80000126-CU-WM-GDS
DECLARATION OF JULIE CHAPMAN

Dept: 19

Action Filed: December 22, 2008

Trial Date: None Set

1 I, JULIE CHAPMAN, declare:

2 1. I am employed by the California Department of Administration (DPA) as
3 the Deputy Director of Labor Relations. I have been employed by DPA since October 16, 2000,
4 in progressively responsible positions, as an Assistant Labor Relations Officer, Senior Labor
5 Relations Officer, and Assistant Chief of Labor Relations. I have been involved in labor relations
6 with the State of California since 1994.

7 2. Part of my duties with DPA includes overseeing the collective bargaining
8 of Memoranda of Understanding (MOU) on behalf of the State with all of the State Bargaining
9 Unit Exclusive Representatives.

10 3. This declaration is being filed concurrently with the Respondent's
11 Opposition to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.
12 I am familiar with the facts stated in this declaration, and if called as a witness, I could, and
13 would, testify competently to these facts.

14 4. On or about December 19, 2008, a member of DPA staff arranged
15 telephone conferences with each State Bargaining Unit where I informed the exclusive
16 representatives for the Bargaining Units that Governor Schwarzenegger was going to sign an
17 Executive Order which declared a fiscal emergency in the State of California and ordered
18 furloughing state civil service employees two days a month commencing in February of 2009.

19 5. On December 19, 2008, DPA sent notices to the exclusive representative
20 for each State Bargaining Unit informing them Governor Schwarzenegger signed Executive
21 Order S-16-08. The Executive Order was attached to the notices. The notices informed the
22 unions to contact me if they wanted to meet and confer regarding the impacts of the
23 implementation of furloughs referenced in the Executive Order. Attached to this declaration as
24 Exhibit "A" are true and accurate copies of the notices that were sent to the Professional
25 Engineers in California Government (PECG), the Service Employees International Union, Local
26 1000 (SEIU), the California Attorneys, Administrative Law Judges, and Hearing Officers
27 (CASE), and the California Association of Professional Scientists (CAPS).

28 6. Since the issuance of the aforementioned notices, I have had meetings with

1 several unions to meet and confer over the impact of the Executive Order. I also instructed my
2 staff to contact the unions that have not arranged dates to meet, to arrange dates to meet and
3 confer over the Executive Order.

4 7. On January 6, 2009, I met with representatives of the Service Employees
5 International Union, Local 1000 (SEIU) to meet and confer regarding the impacts of the
6 Executive Order.

7 8. After my meeting with representatives of the Service Employees
8 International Union, Local 1000 (SEIU), I received a letter dated January 13, 2009, from SEIU
9 where they admit the nine MOU's between the State of California and SEIU covering the nine
10 Bargaining Units represented by SEIU currently remain in effect. Attached to this declaration as
11 Exhibit "B" is a true and accurate copy of the letter from SEIU dated January 13, 2009.

12 9. On January 13, 2009, I met with representatives of the Professional
13 Engineers in California Government (PECG) to meet and confer regarding the impacts of the
14 Executive Order.

15 10. I have a meeting scheduled for January 23, 2009, with representatives of
16 the California Attorneys, Administrative Law Judges, and Hearing Officers (CASE) to meet and
17 confer regarding the impacts of the Executive Order.

18 11. The California Association of Professional Scientists (CAPS) has not
19 requested a meeting to meet and confer regarding the impacts of the Executive Order. I was
20 informed by my staff that CAPS was not interested in meeting regarding the impacts of the
21 furloughs at this time.

22 12. The MOU between the State of California and Professional Engineers in
23 California Government (PECG) covering Bargaining Unit 9, effective July 1, 2006 through July
24 2, 2008, is currently in effect. A true and accurate copy of the cover page and table of contents of
25 this MOU is attached as Exhibit "A" to Respondents' Request for Judicial Notice dated January
26 9, 2009.

27 13. The MOU between the State of California and California Association of
28 Professional Scientists (CAPS) covering Bargaining Unit 10, effective July 1, 2006 through July

1 2, 2008, is currently in effect. A true and accurate copy of the cover page and table of contents of
2 this MOU is attached as Exhibit "B" to Respondents' Request for Judicial Notice dated January 9,
3 2009.

4 14. The MOU between the State of California and California Attorneys,
5 Administrative Law Judges and Hearing Officers in State Employment (CASE) covering
6 Bargaining Unit 2, effective July 1, 2005 through June 30, 2007, is currently in effect. A true and
7 accurate copy of the cover page and table of contents of this MOU is attached as Exhibit "A" to
8 Respondents' Request for Judicial Notice dated January 13, 2009.

9 15. The MOUs between the State of California and Service Employees
10 International Union, Local 1000 (SEIU) covering Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and
11 21, effective July 1, 2005 through June 30, 2008, are currently in effect. A true and accurate copy
12 of the cover page and table of contents is attached as Exhibit "B" to Respondents' Request for
13 Judicial Notice dated January 13, 2009.

14 16. In implementing the furlough plan, it is DPA's intent to implement and
15 manage the plan in a manner fully consonant with the provisions of the Fair Labor Standards Act.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed on this 16th day of January, 2009, at Sacramento, California.

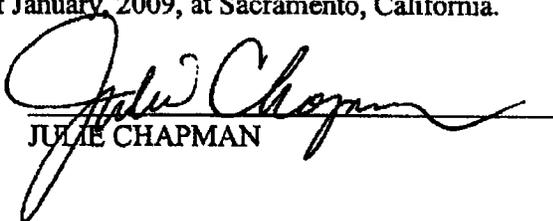
19 
20 JULIE CHAPMAN
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EXHIBIT A

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION

1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258



December 19, 2008

Bruce Blanning
Professional Engineers in California Government
660 "J" Street, Suite 445
Sacramento, CA 95814

Dear Mr. Blanning:

Today, Governor Schwarzenegger signed Executive Order S-16-08 which declared a fiscal emergency in the State of California.

In accordance with the Governor's constitutional and statutory authority and consistent with Government Code section 3516.5, the Department of Personnel Administration (DPA) will implement a furlough of State employees two days a month. This furlough plan will be implemented as of February 1, 2009 through June 30, 2010.

Attached for your review is the executed Executive Order. If you would like to meet and confer regarding this furlough, please contact me at (916) 324-0476.

Sincerely, .

A handwritten signature in black ink, appearing to read "Julie Chapman", with a long horizontal flourish extending to the right.

Julie Chapman
Deputy Director of Labor Relations



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION

1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258

December 19, 2008

Michael Baratz
SEIU, Local 1000, California State Employees Association
PO Box 160005
Sacramento, CA 95816

Dear Mr. Baratz:

Today, Governor Schwarzenegger signed Executive Order S-16-08 which declared a fiscal emergency in the State of California.

In accordance with the Governor's constitutional and statutory authority and consistent with Government Code section 3516.5, the Department of Personnel Administration (DPA) will implement a furlough of State employees two days a month. This furlough plan will be implemented as of February 1, 2009 through June 30, 2010

The Executive Order prohibits new personal services contracts to perform work as a result of the furloughs, layoffs or other position reduction measures. DPA will, as a result of pending layoffs to SEIU employees, meet to discuss any personal services contracts that the Union identifies as a concern.

Attached for your review is the executed Executive Order. If you would like to meet and confer regarding this furlough, please contact me at (916) 324-0476.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Chapman".

Julie Chapman
Deputy Director of Labor Relations



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION

1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258

December 19, 2008

Brooks Ellison
California Attorneys, Admin Law Judges & Hearing Officers in State Employment
1725 Capital Avenue
Sacramento, CA 95811

Dear Mr. Ellison:

Today, Governor Schwarzenegger signed Executive Order S-16-08 which declared a fiscal emergency in the State of California.

In accordance with the Governor's constitutional and statutory authority and consistent with Government Code section 3516.5, the Department of Personnel Administration (DPA) will implement a furlough of State employees two days a month. This furlough plan will be implemented as of February 1, 2009 through June 30, 2010.

Attached for your review is the executed Executive Order. If you would like to meet and confer regarding this furlough, please contact me at (916) 324-0476.

Sincerely,

A handwritten signature in black ink that reads "Julie Chapman".

Julie Chapman
Deputy Director of Labor Relations



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009, and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis, and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION
1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258



December 19, 2008

Christopher Voight
CA Assoc. of Professional Scientists
660 "J" Street, Suite 480
Sacramento, CA 95814

Dear Mr. Voight:

Today, Governor Schwarzenegger signed Executive Order S-16-08 which declared a fiscal emergency in the State of California.

In accordance with the Governor's constitutional and statutory authority and consistent with Government Code section 3516.5, the Department of Personnel Administration (DPA) will implement a furlough of State employees two days a month. This furlough plan will be implemented as of February 1, 2009 through June 30, 2010

Attached for your review is the executed Executive Order. If you would like to meet and confer regarding this furlough, please contact me at (916) 324-0476.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Chapman".

Julie Chapman
Deputy Director of Labor Relations



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

1 DAVID W. TYRA, State Bar No. 116218
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7 Chief Counsel, State Bar No. 095753
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10 LINDA A. MAYHEW
11 Assistant Chief Counsel, State Bar No. 155049
12 WILL M. YAMADA
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20 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
21 Governor; STATE OF CALIFORNIA; DAVID GILB and
22 DEPARTMENT OF PERSONNEL ADMINISTRATION

23 SUPERIOR COURT OF CALIFORNIA

24 COUNTY OF SACRAMENTO

25 PROFESSIONAL ENGINEERS IN
26 CALIFORNIA GOVERNMENT;
27 CALIFORNIA ASSOCIATION OF
28 PROFESSIONAL SCIENTISTS,

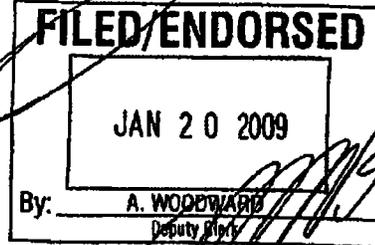
Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

Respondents/Defendants.

AND RELATED CASES



CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

PROOF OF SERVICE

Date January 29, 2009

Time: 9:00 a.m.

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I, May Marlowe, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 20, 2009, I served a copy of the following document(s):

RESPONDENTS' OPPOSITION TO PETITIONERS' PETITIONS FOR WRIT OF MANDATE IN CONSOLIDATED ACTIONS;

DECLARATION OF DAVID W. TYRA;

DECLARATION OF JULIE CHAPMAN;

DECLARATION OF ALENE SHAMAZU;

DECLARATION OF BERNICE TORREY;

DECLARATION OF DIRECTOR OF FINANCE MICHAEL C. GENEST;

EVIDENTIARY OBJECTION TO DECLARATION OF PETER FLORES, JR.

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Attorneys, Administrative Law Judges and
Hearing Officers in State Employment
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 Patrick J. Whalen, Esq.
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Attorney for Respondent/Defendant State
Controller John Chiang
 Rick Chivaro, Esq.
 Ronald V. Placet, Esq.
 Shawn D. Silva, Esq.
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2 1000

3 Paul E. Harris, III, Esq.
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5 J. Felix De La Torre, Esq.
6 Brooke D. Pierman, Esq.
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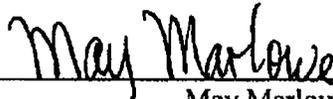
Attorneys for Petitioners/Plaintiffs
Professional Engineers In California
Government and California Association of
Professional Scientists

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14 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
15 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
16 motion of the party served, service is presumed invalid if postal cancellation date or postage
17 meter date is more than one day after date of deposit for mailing in affidavit.

18 I declare under penalty of perjury under the laws of the State of California that the above
19 is true and correct.

20 Executed on January 20, 2009, at Sacramento, California.

21
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25
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28


May Marlowe

1 DAVID W. TYRA, State Bar No. 116218
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489
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21 Governor; STATE OF CALIFORNIA; and DEPARTMENT OF
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23 SUPERIOR COURT OF CALIFORNIA
24 COUNTY OF SACRAMENTO

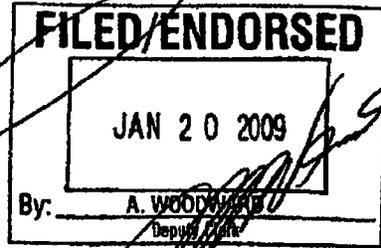
25 PROFESSIONAL ENGINEERS IN
26 CALIFORNIA GOVERNMENT;
27 CALIFORNIA ASSOCIATION OF
28 PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

Respondents/Defendants.



CASE NO. 34-2008-80000126-CU-WM-GDS

DECLARATION OF BERNICE TORREY

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I, BERNICE TORREY, declare:

1. I am employed with the State of California, Department of Personnel Administration (DPA), Personnel Service Branch (PSB) as a Personnel Program Analyst. I have held this position since September, 2006.

2. This declaration is being filed concurrently with the Respondent's Opposition to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. I am familiar with the facts stated in this declaration, and if called as a witness, I could, and would, testify competently to these facts.

3. As a Personnel Program Analyst, I consult with statewide personnel offices on employee salary and leave administration, including pay history, alternate range criteria, and pay differentials. I am responsible for researching, analyzing, calculating, and developing the General Salary Programs, including publication of the State of California Civil Service Pay Scales. I am responsible for resolving complex salary problems within the statewide personnel transactions areas. I assist in planning, developing, and implementing statewide leave programs and provide interpretation of DPA's personnel rules and regulations, including salary rules and regulations. As part of my duties I interpret various provisions of the Fair Labor Standards Act (FLSA) as they apply to issues affecting state employees.

4. No state employee will be paid less than \$6.55 per hour (i.e., the federal minimum wage under the FLSA) for the duration of the furloughs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 16th day of January, 2009, at Sacramento, California.


BERNICE TORREY

1 DAVID W. TYRA, State Bar No. 116218
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13 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
14 Governor; STATE OF CALIFORNIA; DAVID GILB and
DEPARTMENT OF PERSONNEL ADMINISTRATION
15

16 SUPERIOR COURT OF CALIFORNIA
17 COUNTY OF SACRAMENTO

18 PROFESSIONAL ENGINEERS IN
19 CALIFORNIA GOVERNMENT;
20 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

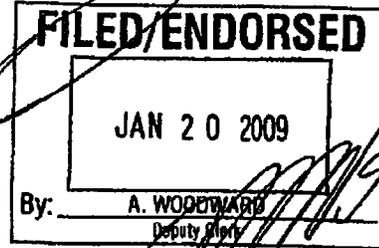
21 Petitioners/Plaintiffs,

22 v.

23 ARNOLD SCHWARZENEGGER, Governor;
24 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
25 STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

26 Respondents/Defendants.
27

28 AND RELATED CASES



CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

PROOF OF SERVICE

Date January 29, 2009

Time: 9:00 a.m.

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I, May Marlowe, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 20, 2009, I served a copy of the following document(s):

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- DECLARATION OF JULIE CHAPMAN;**
- DECLARATION OF ALENE SHAMAZU;**
- DECLARATION OF BERNICE TORREY;**
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Attorneys, Administrative Law Judges and
Hearing Officers in State Employment
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Controller John Chiang
 Rick Chivaro, Esq.
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1 **Attorneys for Petitioner/Plaintiff SEIU, Local**
2 **1000**

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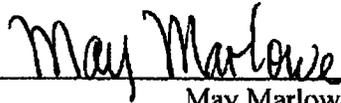
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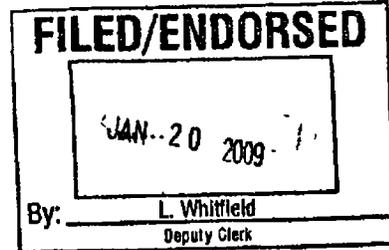
20 Executed on January 20, 2009, at Sacramento, California.

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May Marlowe

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6 Attorney for Petitioners/Plaintiffs
7 PROFESSIONAL ENGINEERS IN CALIFORNIA
8 GOVERNMENT and CALIFORNIA ASSOCIATION
9 OF PROFESSIONAL SCIENTISTS



10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SACRAMENTO

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
14 CALIFORNIA ASSOCIATION OF
15 PROFESSIONAL SCIENTISTS

16 Petitioners/Plaintiffs,

17 v.

18 ARNOLD SCHWARZENEGGER, Governor,
19 STATE OF CALIFORNIA; DEPARTMENT
20 OF PERSONNEL ADMINISTRATION;
21 STATE CONTROLLER JOHN CHIANG; and
22 DOES 1 THROUGH 20, INCLUSIVE

23 Respondents/Defendants.

CASE NO.
34-2008-80000126-CU-WM-GDS

PETITIONERS PECG AND CAPS'
OPPOSITION TO RESPONDENT
ARNOLD SCHWARZENEGGER AND
DPA'S DEMURRER TO PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

Date: January 29, 2009
Time: 9:00 a.m.
Dept: 19

Honorable Patrick Marlette

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25 (continued)
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1 CALIFORNIA ATTORNEYS,
2 ADMINISTRATIVE LAW JUDGES AND
3 HEARING OFFICERS IN STATE
4 EMPLOYMENT,

5 Petitioners/Plaintiffs,

6 v.

7 ARNOLD SCHWARZENEGGER as Governor
8 of the State of California; DAVID GILB as
9 Director of the Department of Personnel
10 Administration; JOHN CHIANG, Controller of
11 the State of California; and DOES 1 through 10,
12 inclusive,

13 Respondents/Defendants.

Related CASE NO.
34-2009-80000134-CU-WM-GDS

11 SERVICE EMPLOYEES INTERNATIONAL
12 UNION, LOCAL 1000,

13 Petitioners/Plaintiffs,

14 v.

15 ARNOLD SCHWARZENEGGER as Governor,
16 State of California, DEPARTMENT OF
17 PERSONNEL ADMINISTRATION; JOHN
18 CHIANG, as State Controller; and DOES 1
19 through 20, inclusive,

20 Respondents/Defendants.

Related CASE NO.
34-2009-80000135-CU-WM-GDS

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PECG and CAPS Opposition to Respondents/Defendants Demurrer

1 **INTRODUCTION**

2 Petitioners/Plaintiffs Professional Engineers in California Government (PECG) and
3 California Association of Professional Scientists (CAPS) hereby file their Opposition to the
4 Governor and Department of Personnel Administration's Demurrer to the Petition for Writ of
5 Mandate and Complaint for Declaratory and Injunctive Relief.

6 The demurrer contends that this Court lacks jurisdiction over the cause of action alleged
7 in the Petition because exclusive jurisdiction in the subject matter of the claims is vested in the
8 Public Employment Relations Board (PERB) and that Petitioners have failed to exhaust
9 administrative remedies.

10 The demurrer must be overruled as the question before this Court does not implicate
11 PERB's jurisdiction. The controversy presented here is not the same as that which PERB would
12 have the jurisdiction to hear. The question as presented in the Petition is the Governor's
13 authority to issue an executive order cutting hours and pay under Government Code section
14 19826 - a statute not administered by PERB. The constitutionally based separation of powers
15 dispute which Petitioners seek to litigate is separate and distinct from any issue of whether the
16 state violated its collective bargaining obligations under the Ralph C. Dills Act. Even if the court
17 were to find this dispute to be within PERB's jurisdiction, the exhaustion should not be required
18 as the facts are undisputed and there is no need for administrative development of the record,
19 judicial intervention would not interfere with PERB's "expertise" or create problems of judicial
20 economy, and the underlying dispute over authority will ultimately be decided by the courts.

21 Also, the demurrer completely ignores the fact that the Petition includes claims on behalf
22 of thousands of supervisory employees represented by PECG and CAPS and ignores Petitioners'
23 claims regarding the lack of authority to alter the forty hour workweek for either bargaining unit
24 or supervisory employees. Supervisory employees are specifically excluded from collective
25 bargaining and the PERB has no jurisdiction over these employees. The demurrer does not point
26 to, nor is there, any administrative remedy for their dispute over the cut in hours and resulting cut
27 in pay.

1 complaint for declaratory relief concerns the authority of the Governor in issuing an executive
2 order under the constitutional separation of powers and whether Government Code section 19826
3 prevents the Governor from taking this action.

4 The Petition filed in this case seeks to halt this illegal furlough program on the basis that
5 the Legislature retains ultimate authority over state employees' wages, hours and working
6 conditions under Government Code section 19826. (*Department of Personnel Administration v.*
7 *Superior Court* (1992) 5 Cal.App.4th 155, 181.) The Petition asks the Court to rule on the
8 Governor's authority, not the question of whether the state is obligated to negotiate prior to
9 implementing changes in salary or hours of work. The controversy presented to this Court is
10 substantially different than that which could be presented to the PERB and is outside of the
11 purview of PERB's limited jurisdiction. The resolution of this question involves a fundamental
12 legal question that only this Court, not the PERB, is empowered to decide.

13 If PERB were to review these facts in this dispute it could only do so in the unfair labor
14 practice setting. (Gov. Code § 3514.5) In conducting such a review, PERB must accept that the
15 Governor has the authority to enact the Executive Order. PERB can neither enforce the parties
16 contract nor declare that the executive order unconstitutionally infringes on the Legislature's
17 power in violation of the separation of powers. PERB's jurisdiction to remedy unfair practices
18 does not preempt state suits that present different issues. (*San Diego Teachers Assn. v. Superior*
19 *Court, supra*, 24 Cal.3d at 9.)

20 PERB has concluded in the past that this very issue of authority over salaries is one which
21 the courts, not PERB, must decide. Issues concerning the Legislature's delegation of authority in
22 salary setting to the Executive Branch fall squarely "within the purview of the judicial branch."
23 (*Department of Personnel Administration v. Superior Court*, 5 Cal.App.4th at 165.) In *DPA v.*
24 *Superior Court*, a case involving the Governor, DPA, and state employee unions, PERB took the
25 position that "exhaustion" was not required and that the courts, not PERB, should decide the
26 legal question of how a non-Dills act statute (the same statute at issue here, Government Code
27 section 19826) should be interpreted and applied. (*Id.*, at 164 - 165.) Clearly, the dispute at issue
28

1 here presents different issues than those which could be presented to PERB.

2 Under "prong 2," the PERB lacks the authority to provide the remedy sought in PECG
3 and CAPS' writ and declaratory relief complaint. The remedy for an "unfair labor practice" is
4 distinct from the relief sought in this matter. PERB's typical remedial order to "bargain in good
5 faith" would not provide the relief sought in this action – the declaration that the Governor lacks
6 the authority to implement a furlough and the issuance of a writ precluding the Governor, DPA
7 and the State Controller from implementing the furlough. Further, the Legislature has stated that
8 the PERB "shall not have the authority to enforce agreements between the parties." (Gov. Code
9 §3514.5(b).) Clearly, PECG and CAPS should not be required to exhaust a remedy under the
10 Dills Act when PERB plainly lacks the authority to provide the relief sought here which can only
11 be provided judicially. (*San Diego Teachers Assn. v. Superior Court, supra*, 24 Cal.3d at 8.)

12 Finally, under prong 3, there is no indication that the Dills Act in any way gives PERB
13 any authority to comment on, much less invalidate, the authority of the Governor to issue an
14 executive order. This separation of powers argument is one which must be presented to the
15 courts, not to an administrative agency. (*Department of Personnel Administration v. Superior*
16 *Court* (1992) 5 Cal.App.4th 155, 165.) The PERB even lacks jurisdiction to enforce statutes
17 setting forth public employee rights. (*California Teachers Assn. v. Livingston Union School*
18 *District* (1990) 219 Cal.App.3d 1503, 1525.)

19 The Governor and DPA's reliance on *El Rancho Unified School District v. National*
20 *Education Association* (1983) 33 Cal.3d 946 to support the argument that this case be withdrawn
21 from the court and removed to PERB is without merit. In *El Rancho*, the California Supreme
22 Court held that the Educational Employment Relations Act (EERA) divested the superior courts
23 of jurisdiction because the conduct complained of was protected or prohibited by a statute
24 administered by PERB. The court found that under the preemption doctrine, PERB had
25 exclusive jurisdiction over activities arguably prohibited by EERA. The court further held
26 preemption was justified under the arguably prohibited standard because the controversy
27 presented to the trial court was "identical" to that which could be presented to PERB. As
28

1 discussed above, the controversy here surrounds the Governor's authority and the constitutional
2 separation of powers argument, a matter which is not encompassed within the Dills Act and
3 which cannot be presented to PERB.

4 The Governor and DPA argue that a ruling from this court will effect a special exemption
5 to the Dills Act only applicable to the parties to the case and the court will supplant PERB as
6 arbiter over the parties bargaining relationship. (Governor and DPA's Brief in Support of
7 Demurrer at page 8, lines 23 - 26.) That is simply not true. This Court is only being asked to
8 rule whether the Governor has the authority to implement a furlough that is inconsistent with
9 statute through an executive order. This Court is not being asked whether the Governor and
10 DPA violated any provision of the bargaining law. The judicial challenge brought to this action
11 is the only appropriate vehicle to resolve the dispute over the Governor's authority.

12
13 **THIS MATTER SHOULD NOT BE SENT TO PERB AS IT WOULD BE FUTILE,
14 CAUSE UNNECESSARY DELAY AND IRREPARABLE HARM**

15 The Governor claims that the PERB should hear the issue before this Court because,
16 under the exhaustion of administrative remedies, PERB has "exclusive initial jurisdiction" over
17 the dispute. Although PECG and CAPS dispute the "exclusive initial jurisdiction" of PERB over
18 this case, any "failure to exhaust" possible administrative remedies before PERB must be
19 excused.

20 In *Green v. City of Oceanside* (1987) 194 Cal.App.3d 212, 222, the court noted that a
21 "failure to exhaust administrative remedies" may be excused in

22 ...situations where the agency indulges in unreasonable delay [citation], when the
23 subject matter lies outside the administrative agency's jurisdiction, when pursuit
24 of an administrative remedy would result in irreparable harm, when the agency is
25 incapable of granting an adequate remedy, and when resort to the administrative
26 process would be futile because it is clear what the agency's decision would be.
27 [Citations.] (*Id.*, at 222.)

26 More specifically, in the previous case regarding a pay cut directly involving the
27 Governor, DPA, PERB and CAPS, the Court of Appeal, Third District, in *DPA v. Superior*

1 Court, 5 Cal.App.4th 155, 168 - 169, excused the unions' need to exhaust PERB's unfair practice
2 proceeding because of the nature of the legal questions raised and the potential for irreparable
3 injury. In fact in that case, PERB took the position before the courts that "exhaustion" was not
4 required and that the court, not PERB, should decide the legal question of how a non-Dills Act
5 statute (Gov. Code § 19826) should be interpreted and applied. In that case, the court found
6 exhaustion was not required as the facts were undisputed and there was no need for
7 administrative development of the record, judicial intervention would not interfere with PERB's
8 "expertise" or create problems of judicial economy, and the underlying dispute over authority
9 would ultimately be decided by the courts. (*Id.* at 169 - 170.) The present dispute fits squarely
10 within these parameters.

11 Several of the exceptions outlined above in *Greene v. Oceanside* apply to this case. As
12 previously discussed, PERB is incapable of adjudicating the ultimate issue in this case - the
13 Governor's authority to issue an executive order in conflict with statute. Thus, a hearing before
14 PERB would be futile. Furthermore, requiring this case to be heard by PERB prior to this
15 court's decision would lead to an unnecessary and protracted delay on an issue that is of great
16 importance to the Governor, the Legislature, hundreds of thousands of state employees, and the
17 public at large. Each of these groups has a considerable interest in the budget debate and the
18 numerous legislative and budgetary proposals under consideration.

19 Diverting this dispute to the PERB's administrative process would preclude a prompt
20 answer to the legal question presented - can the Governor cut pay and hours through an executive
21 order? If the action is an illegal attempt to exercise legislative power, the parties need to know
22 it. Delaying an answer on this important question of law so as to permit PERB to consider
23 whether the adoption of an executive order - a matter over which it has no expertise or special
24 competency - runs afoul of a duty to bargain, is an administrative indulgence that this state
25 simply cannot and should not have to suffer.

26 Recently, the Governor and the DPA sided with CAPS in opposing the jurisdiction of
27 PERB in a similar dispute. In that case, PERB attempted to intervene in a dispute over a
28

1 challenge to a state law creating an alternate retirement program for certain new state employees.
2 PERB alleged it had exclusive initial jurisdiction. CAPS, the Governor and DPA all opposed
3 PERB's attempt to intervene. The trial court denied PERB's application to intervene. The Court
4 of Appeal upheld this denial concluding that the "gravaman of the association's challenge was a
5 violation of a constitutional contract right, rather than an unfair practice charge in violation of the
6 Dills Act within the Board's jurisdiction." (*California Association of Professional Scientists v.*
7 *Schwarzenegger* (2006) 137 Cal.App.4th 371.) Here, the gravaman of the challenge is a
8 violation of the separation of powers, rather than an unfair practice charge alleging a failure to
9 meet and confer in violation of the Dills Act. Surprisingly, *CAPS v. Schwarzenegger* is cited by
10 the Governor and DPA in support of the demurrer, even though in that case, the Governor and
11 DPA opposed PERB's jurisdiction and the courts ruled that PERB did not have jurisdiction.

12 The need for prompt resolution of questions of law excused the unions from having to
13 exhaust PERB's remedies in 1992 in *DPA v. Superior Court, supra*. This same "need" is present
14 today and therefore should again excuse the parties from exhausting PERB's processes today.

15 **THE FACT THAT THE PARTIES' MOUs CONTINUE PURSUANT TO 3517.8 IS OF**
16 **NO IMPORT TO THIS CASE**

17 Respondent is correct that both PEGC and CAPS are parties to MOUs with the State of
18 California. Pursuant to Government Code section 3517.8, those MOUs remain in effect. This
19 Petition and Complaint do not allege that the Governor has unconstitutionally impaired the
20 parties labor agreement. However, if Petitioners were to make such an allegation, the courts, and
21 not PERB, would be the proper place to adjudicate that dispute. (*California Association of*
22 *Professional Scientists v. Schwarzenegger* (2006) 137 Cal.App.4th 371.) Further, the Legislature
23 has specifically stated that the PERB "shall not have the authority to enforce agreements between
24 the parties." (Gov. Code §3514.5(b).) Deferral to PERB is not appropriate.

25 Respondents contend that Section 19826 is "inapplicable to the case at hand because it is
26 superseded by existing MOUs between the parties." (Brief in Support of Demurrer, page 4, lines
27 21 - 22.) Respondents therefore argue that PEGC and CAPS should have gone to PERB, despite
28

1 the fact that PERB does not enforce agreements. Respondents' premise that Section 19826 is
2 superseded is wrong.

3 Government Code section 19826 is not incorporated into either the Unit 9 or Unit 10
4 MOU. Section 19826 subdivision (b) states that DPA shall not "establish, adjust, or recommend
5 a salary range" for represented employees. Section 19826 subdivision (d) states that the section
6 can be superseded by an MOU meaning that DPA's salary setting function is one which may be
7 overridden in an MOU. (Gov. Code § 19826, subd. (d); *Tirapelle v. Davis* (1993) 20
8 Cal.App.4th 1317, 1325.) Thus, the bar on DPA adjusting salaries is in place in law and is
9 binding unless an MOU conflicts with that section. While the Unit 9 and Unit 10 MOUs contain
10 provisions calling for agreed upon salary increases, they do not conflict with Section 19826.
11 Clearly, they do not give the Governor or the state employer the power to adjust salaries. Since
12 the MOUs do not conflict with Section 19826 subdivision (b), this law preventing the Governor
13 and the DPA from reducing salaries is applicable and is binding.

14
15 **EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING ARE EXCLUDED**
16 **ENTIRELY FROM THE PUBLIC EMPLOYMENT RELATIONS BOARD'S**
JURISDICTION

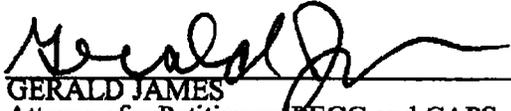
17 The Petition for Writ of Mandate and Complaint for Declaratory Relief was filed on
18 behalf of all employees represented by PECG and CAPS. Within this group of employees there
19 are bargaining unit employees covered by the collective bargaining law, or Dills Act, and there
20 are employees who are excluded from coverage under the Dills Act. (See Gov. Code § 3513 (c)
21 and (g) which exclude supervisory employees from coverage under the Dills Act.) While PECG
22 and CAPS contend that PERB lacks the jurisdiction to hear any of the claims brought by this
23 Petition and Complaint, even the demurrer does not, and cannot, allege that there is an
24 administrative remedy available to employees excluded from collective bargaining.

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CONCLUSION

Applying precedent, it is clear that jurisdiction in this court, and not in the PERB, is proper. Just as it was in 1992 when the Governor sought to cut pay for state employees, this dispute is one for the courts to decide, not the PERB. On that basis, Petitioners PEGC and CAPS respectfully urge that this court dismiss the demurrer in its entirety.

Dated: January 20, 2009


GERALD JAMES
Attorney for Petitioners PEGC and CAPS

1 **PROOF OF SERVICE**

2 Professional Engineers in California Government, et al. v. Arnold Schwarzenegger, et al.
3 Sacramento Superior Court Case No. 34-2008-80000126-CU-WM-GDS

4 I declare that I am employed in the County of Sacramento, California. I am over the age
5 of 18 years and not a party to the within entitled cause. The address of my business is 660 J
6 Street, Suite 445, Sacramento, California, 95814.

7 On January 20, 2009, I served the **PETITIONERS PECG AND CAPS' OPPOSITION**
8 **TO RESPONDENT ARNOLD SCHWARZENEGGER AND DPA'S DEMURRER TO**
9 **PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND**
10 **DECLARATORY RELIEF** on the parties listed below by placing true copies thereof in sealed
11 envelopes with the fees paid and depositing said envelopes with the United Parcel Service for
12 guaranteed next day delivery and by transmitting the documents via e-mail or electronic
13 transmission to the persons at the e-mail addresses listed below:

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15 Kristianne T. Seargeant
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17 400 Capitol Mall, 27th Floor
18 Sacramento, CA 95814-4407
19 dtyra@kmtg.com
20 *Attorney for Respondents/Defendants Governor Arnold Schwarzenegger and Department*
21 *of Personnel Administration*

22 Will M. Yamada
23 Department of Personnel Administration
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25 Sacramento, CA 95811-7246
26 WillYamada@dpa.ca.gov
27 *Attorney for Respondents/Defendant Department of Personnel Administration*

28 Richard Chivaro
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Attorney for Respondent/Defendant State Controller John Chiang

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5 lobby@ellisonwilson.com
6 *Attorneys for Petitioners/Plaintiffs California Attorneys, Administrative Law Judges and*
7 *Hearing Officers in State Employment*

8 J. Felix De La Torre
9 Brooke D. Pierman
10 Service Employees International Union, Local 1000
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13 Fdelatorre@SEIU1000.org
14 *Attorneys for Petitioners/Plaintiffs Service Employees International Union, Local 1000*

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on January 20, 2009 at Sacramento, California.

18 
19 GERALD JAMES

1 RICHARD J. CHIVARO
Chief Counsel, State Bar No. 124391
2 RONALD V. PLACET
Senior Staff Counsel, State Bar No. 155020
3 SHAWN D. SILVA
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FILED/ENDORSED
JAN 20 2009
By: L. Whitfield
Deputy Clerk

8 Attorneys for Respondent/Defendant CALIFORNIA STATE CONTROLLER
9 JOHN CHIANG

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SACRAMENTO**

13
14 PROFESSIONAL ENGINEERS IN
15 CALIFORNIA GOVERNMENT;
16 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

17 Petitioners/Plaintiffs,

18 vs.

19 ARNOLD SCHWARZENEGGER, Governor,
20 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
21 STATE CONTROLLER JOHN CHIANG; and
DOES 1 THROUGH 20, INCLUSIVE,

22 Respondents/Defendants.
23

Case No. 34-2008-80000126

**ANSWER TO PETITION FOR WRIT
OF MANDATE & COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

(Exempted from fees (Govt. Code § 6103))

24 **I. INTRODUCTION**

25 Respondent/Defendant JOHN CHIANG (hereinafter "Respondent"), answers the
26 Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief filed by
27 Petitioners PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT and the
28

1 CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS (hereinafter "Petitioners")
2 as follows:

3 II. RESPONSES TO GENERAL ALLEGATIONS: PARTIES

4 1. Answering paragraphs 1 and 2 of the Petition, Respondent affirmatively alleges
5 that Government Code sections 3513, 3520.5, and 3527 speak for themselves as duly enacted
6 provisions of law. Respondent also admits that Executive Order S-16-08 speaks for itself.
7 Finally, based on information and belief, Respondent admits to the remaining allegations
8 contained in those paragraphs.

9 2. Answering paragraphs 3 and 4 of the Petition, Respondent affirmatively alleges
10 that Government Code sections 3513, 3517, 3527 and 19815.2 speak for themselves as duly
11 enacted provisions of law and admit the remaining allegations contained in those paragraphs.

12 3. Answering paragraph 5 of the Petition, Respondent admits that the
13 Respondent/Defendant CALIFORNIA STATE CONTROLLER JOHN CHIANG is a state
14 constitutional officer and as the duly elected Controller of the State of California is being sued
15 in his official capacity only. Respondent affirmatively alleges that Government Code sections
16 12410 and 12440 speak for themselves as duly enacted provisions of law and are not in any way
17 limitations on Respondent's authority. Except as admitted and/or affirmatively alleged,
18 Respondent denies each and every allegation contained in that paragraph.

19 4. Answering paragraph 6 of the Petition, Respondent lacks information or belief as
20 to the matters therein alleged, and on that basis denies the allegations contained in that
21 paragraph.

22 III. RESPONSES TO VENUE

23 5. Answering paragraphs 7 and 8 of the Petition, Respondent admits the allegations
24 contained in those paragraphs.

25 IV. RESPONSE TO THE GOVERNOR'S DECEMBER 19, 2008 EXECUTIVE ORDER

26 6. Answering paragraph 9 of the Petition, Respondent affirmatively alleges that
27 Article III, section 3 of the Constitution of the State of California speaks for itself as a duly
28 enacted provision of law.

1 7. Answering paragraph 10 of the Petition, Respondent affirmatively alleges that
2 Article V, section 1 of the Constitution of the State of California speaks for itself as a duly
3 enacted provision of law.

4 8. Answering paragraph 11 of the Petition, Respondent affirmatively alleges that
5 Government Code section 12010 speaks for itself as duly enacted provision of law.

6 9. Answering paragraph 12 of the Petition, Respondent admits that the Governor
7 may issue directives to subordinate executive officers under his direct executive authority,
8 which directs and guides these individuals in the enforcement of a particular law. Respondent
9 further affirmatively alleges that 63 Ops.Cal.Atty.Gen. 583 (1980), a published opinion of the
10 California Attorney General, speaks for itself. Except as admitted, Respondent denies each and
11 every other allegation contained in paragraph 12.

12 10. Answering paragraph 13 of the Petition, Respondent admits the first sentence of
13 that paragraph. In addition, Respondent affirmatively alleges that *Lukens v. Nye* (1909) 156
14 Cal. 498, speaks for itself as a duly issued opinion of the California Supreme Court. Except as
15 admitted, Respondent denies each and every other allegation contained in paragraph 13.

16 11. Answering paragraph 14 of the Petition, Respondent admits the allegations
17 contained in that paragraph.

18 12. Answering paragraph 15 of the Petition, Respondent admits that Executive Order
19 S-16-08 speaks for itself. Except as admitted, Respondent denies each and every other
20 allegation contained in paragraph 15.

21 13. Answering paragraph 16 of the Petition, Respondent affirmatively allege that
22 Government Code section 3516.5 speaks for itself as duly enacted provision of law. Except as
23 expressly admitted, Respondent, Controller John Chiang, denies each and every other allegation
24 contained in paragraph 16 that relates to himself and the Office of the State Controller.

25 Respondent, Controller John Chiang, denies he or his office has sought implementation of "the
26 salary and hour cut" through the implementation of Executive Order S-16-08. In addition, the
27 Respondent, Controller John Chiang, alleges that these remaining allegations contained in
28 paragraph 16 could only apply to the other Respondents/Defendants named in this action.

1 14. Answering paragraph 17 of the Petition, Respondent admits to the allegations
2 contained in this paragraph.

3 15. Answering paragraph 18 of the Petition, Respondent admits the first sentence of
4 that paragraph. Furthermore, Respondent affirmatively alleges that *Lowe v. Resources Agency*
5 (1991) 1 Cal.App.4th 1140, speaks for itself as a duly issued opinion of the California Court of
6 Appeals for the Third Appellate District. Except as expressly admitted, Respondent denies each
7 and every other allegation contained in paragraph 18.

8 16. Answering paragraph 19 to the Petition, Respondent affirmatively alleges that
9 Government Code section 19826 speaks for itself as duly enacted provision of law.

10 17. Answering paragraph 20 to the Petition, Respondent admits the allegations in
11 paragraph 20. Furthermore, Respondent affirmatively alleges that *Department of Personnel*
12 *Administration v. Greene* (1992) 5 Cal.App.4th 155, speaks for itself as a duly issued opinion of
13 the California Court of Appeals for the Third Appellate District.

14 18. Answering paragraph 21 to the Petition, Respondent affirmatively alleges that
15 Government Code section 19851 speaks for itself as duly enacted provision of law.

16 19. Answering paragraph 22 to the Petition, Respondent affirmatively alleges that
17 Government Code section 19852 speaks for itself as duly enacted provision of law.

18 20. Answering paragraph 23 to the Petition, Respondent admits the allegations
19 contained in paragraph 23.

20 21. Answering paragraph 24 to the Petition, Respondent, Controller John Chiang,
21 denies each and every allegation contained in the first sentence of paragraph 24 that relates to
22 himself and the Office of the State Controller. Respondent, Controller John Chiang, denies he
23 or his office has sought to enact or enforce Executive Order S-16-08. Further, the Respondent,
24 Controller John Chiang, alleges that these remaining allegations contained in the first sentence
25 of paragraph 24 could only apply to the other Respondents/Defendants named in this action. In
26 addition, Respondent, Controller John Chiang, admits the allegations contained in the second
27 sentence of paragraph 24.

28 ////

1 V. THE CONTROLLER'S ALLEGED DUTY REGARDING THE EXECUTIVE ORDER

2 22. Answering paragraph 25 to the Petition, Respondent admits the first sentence of
3 that paragraph. Further, Respondent affirmatively alleges that Government Code section 12440
4 speaks for itself as a duly enacted provision of law and is not in any way a limitation on
5 Respondent's authority. In addition, Respondent affirmatively alleges that *Tirapelle v. Davis*
6 (1993) 20 Cal.App.4th 1317, speaks for itself as a duly issued opinion of the California Court of
7 Appeals for the Third Appellate District. Except as admitted and/or affirmatively alleged,
8 Respondents deny each and every allegation contained in that paragraph.

9 23. Answering paragraph 26 to the Petition, Respondent admits the allegations
10 contained in the first sentence of this paragraph. Respondent admits that the Department of
11 Personnel Administration has no authority to unilaterally change the salary of represented
12 employees. Further, Respondent admits the Governor and the Department of Personnel
13 Administration currently have no authority, under Executive Order S-16-08, to implement a
14 furlough, and therefore, the Controller has no authority to reduce salaries as a result of this
15 proposed furlough.

16 RESPONSE TO FIRST CAUSE OF ACTION

17 (PETITION FOR WRIT OF MANDATE)

18 24. Answering paragraph 27 to the Petition, Respondent hereby fully incorporates by
19 reference all of the foregoing paragraphs as though fully set forth herein.

20 25. Answering paragraph 28 to the Petition, Respondent admits that on December
21 19, 2008 the Governor issued Executive Order S-16-08 which speaks for itself. Except as
22 affirmatively alleged, Respondents deny each and every allegation contained in paragraph 28.

23 26. Answering paragraphs 29, 30, and 31 to the Petition, Respondent admits the
24 allegations contained in those paragraphs.

25 27. Answering paragraph 32 to the Petition, Respondent admits that the Governor
26 and the Department of Personnel Administration's proposed furlough conflicts with
27 Government Code section 19826, subdivision (b). Further, Respondent admits that based on
28 Government Code section 19826, subdivision (b), and other legal authorities, including but not

1 limited to constitutional provisions, statutes, Attorney General Opinions and case law identified
2 in paragraphs 9, 10, 11, 12, 13, 18, 19, 20, 21 22 and 25, the Governor and Department of
3 Personnel Administration do not have the authority to unilaterally implement the furlough. The
4 Respondent admits to all other allegations contained in paragraph 32.

5 28. Answering paragraphs 33 and 34 to the Petition, Respondent admits the
6 allegations contained in those paragraphs.

7 RESPONSE TO SECOND CAUSE OF ACTION

8 (COMPLAINT FOR DECLARATORY INJUNCTIVE RELIEF)

9 29. Answering paragraph 35 to the Petition, Respondent hereby fully incorporates by
10 reference all of the foregoing paragraphs as though fully set forth herein.

11 30. Answering paragraph 36 to the Petition, Respondent admits the allegations
12 contained in that paragraph.

13 31. Answering paragraph 37 to the Petition, and based on the current lack of
14 legislative authorization or other adequate legal authority for implementing the Governor and
15 the Department of Personnel Administration's furlough of state employees, Respondent
16 Controller John Chiang admits that he does not intend to implement the Department of
17 Personnel Administration's furlough proposal if such a proposal is submitted to his office by the
18 Department.

19 32. Answering paragraphs 38 and 39, Respondent admits the allegations contained in
20 those paragraphs.

21 33. Answering paragraph 40, Respondent denies each and every allegation contained
22 in that paragraph regarding Respondent/Defendant John Chiang and the Office of the State
23 Controller. Except as denied, Respondent John Chiang admits each and every allegation
24 contained in that paragraph regarding the other Respondents/Defendants.

25 34. Answering paragraph 41, Respondent admits the allegations contained in that
26 paragraph.

27 35. Answering paragraph 42, Respondent denies each and every allegation contained
28 in that paragraph regarding Respondent/Defendant John Chiang and the Office of the State

1 Controller. Except as denied, Respondent John Chiang admits each and every allegation
2 contained in that paragraph regarding the other Respondents/Defendants.

3 36. Answering paragraph 43, Respondent admits the allegations contained in that
4 paragraph.

5 37. Answering paragraph 44, Respondent denies each and every allegation contained
6 in that paragraph regarding Respondent/Defendant John Chiang and the Office of the State
7 Controller. Except as denied, Respondent John Chiang admits each and every allegation
8 contained in that paragraph regarding the other Respondents/Defendants.

9
10 WHEREFORE, Respondent requests the following:

11 1. That the Court issue a peremptory writ in the first instance commanding the
12 Governor and the Department of Personnel Administration to comply with their duties under
13 Article III, section 3 and Article V, section 1 of the California Constitution and Government
14 Code sections 19826 and 19851 and to set aside the portions of the Governor's Executive Order
15 S-16-08 calling for a furlough and salary reduction for state employees in that the Executive
16 Order is unlawful and illegal;

17 2. As the Respondent/Defendant John Chiang takes a position in support of the
18 Petitioners/Plaintiffs, no peremptory writ need be issued as to this Respondent/Defendant if the
19 above peremptory writs are issued against the Governor and the Department of Personnel
20 Administration;

21 3. That the Court issue a declaration that the portions of the Governor's Executive
22 Order S-16-08 calling for a furlough and salary reduction for state employed engineers and
23 scientists is unlawful and illegal in that the Governor and the Department of Personnel
24 Administration have violated and continue to violate the provisions of Article III, section 3 and
25 Article V, section 1 of the California Constitution and Government Code sections 19826 and
26 19851 by calling for and implementing a furlough and salary reduction for state employees.

27 ////

28 ////

1 4. As the Respondent/Defendant John Chiang takes a position in support of the
2 Petitioners/Plaintiffs, he does not object to the issuance of a preliminary and permanent
3 injunction against the Governor and the Department of Personnel Administration to cease and
4 desist taking action to furlough state employed engineers and scientists by reducing their hours
5 and reducing their pay under an unlawful Executive Order;

6 5. That the Court grant other and further relief as the Court may deem just and
7 proper.

8 Respectfully submitted,

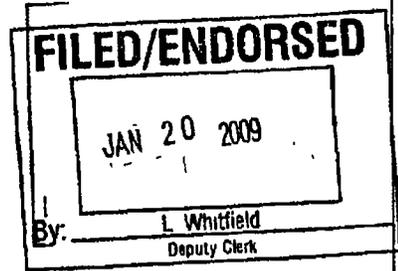
9 Dated: January 20, 2009

OFFICE OF THE STATE CONTROLLER

10
11 

12 By: _____
13 RICHARD J. CHIVARO, Chief Counsel
14 Attorney for Respondent/Defendant
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1 RICHARD J. CHIVARO
Chief Counsel, State Bar No. 124391
2 RONALD V. PLACET
Senior Staff Counsel, State Bar No. 155020
3 SHAWN D. SILVA
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8 Attorneys for Respondent/Defendant CALIFORNIA STATE CONTROLLER
9 JOHN CHIANG

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SACRAMENTO**
13

14 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
15 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

16 Petitioners/Plaintiffs,

17 vs.

18 ARNOLD SCHWARZENEGGER, Governor,
19 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
20 STATE CONTROLLER JOHN CHIANG; and
DOES 1 THROUGH 20, INCLUSIVE,

21 Respondents/Defendants.
22

Case No. 34-2008-80000126

**PROOF OF SERVICE BY FIRST
CLASS MAIL AND ELECTRONIC
DELIVERY**

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Exempted from Fees (Govt. Code § 6103)

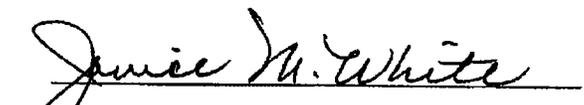
23
24 I am a citizen of the United States and a resident of the County of Butte, California. I
25 am over the age of eighteen (18) years and not a party to the above-entitled action. My business
26 address is 300 Capitol Mall, Suite 1850, Sacramento, CA 95814.

27 On January 20, 2009 I served the following document:

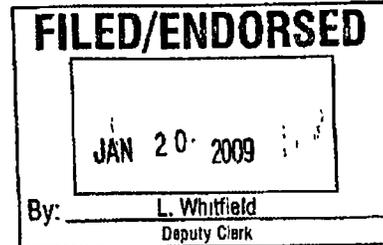
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Proof of Service was executed on January 20, 2009.


Janice M. White

1 RICHARD J. CHIVARO
Chief Counsel, State Bar No. 124391
2 RONALD V. PLACET
Senior Staff Counsel, State Bar No. 155020
3 SHAWN D. SILVA
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8 Attorneys for Respondent/Defendant CALIFORNIA STATE CONTROLLER
9 JOHN CHIANG

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SACRAMENTO**

13
14 PROFESSIONAL ENGINEERS IN
15 CALIFORNIA GOVERNMENT;
16 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

17 Petitioners/Plaintiffs,

18 vs.

19 ARNOLD SCHWARZENEGGER, Governor;
20 STATE OF CALIFORNIA;
DEPARTMENT OF PERSONNEL
ADMINISTRATION;
21 STATE CONTROLLER JOHN CHIANG;
and DOES 1 THROUGH 20, inclusive,

22 Respondents/Defendants.

Case No. 34-2008-80000126
Related Cases: 34-2009-80000134 and
34-2009-80000135

**CONTROLLER'S OPPOSITION TO
REPENDENTS'/DEFENDANTS'
DEMURRER TO VERIFIED
PETITIONS FOR WRIT OF
MANDATE AND COMPLAINTS FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Date: January 29, 2009
Time: 9:00 a.m.
Dept: 19

Exempted from Fees (Govt. Code § 6103)

23
24 Respondent/Defendant JOHN CHIANG, California State Controller (hereinafter
25 "Controller") respectfully submits this Opposition to the Demurrer of ARNOLD
26 SCHWARZENEGGER, Governor; STATE OF CALIFORNIA; and DEPARTMENT OF
27 PERSONNEL ADMINISTRATION (collectively "Respondents"), to the Petitions for Writ of
28

1 Mandate and Complaints for Declaratory Relief and Injunctive Relief filed on December 22,
2 2008, by Petitioners/Plaintiffs PROFESSIONAL ENGINEERS IN CALIFORNIA
3 GOVERNMENT (PECG) and CALIFORNIA ASSOCIATION OF PROFESSIONAL
4 SCIENTISTS (CAPS); on January 5, 2009 by CALIFORNIA ATTORNEYS,
5 ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE
6 EMPLOYMENT; and on January 7, 2008, by Petitioner/Plaintiff SERVICE EMPLOYEES
7 INTERNATIONAL UNION LOCAL 1000.
8

9
10 **INTRODUCTION**

11 In this pleading the Controller addresses both the Demurrer of Respondents and the
12 Petitions and Complaints of the Petitioners in all of the related cases. As to the Petitions and
13 Complaints, the Controller is in concurrence and incorporates by reference the arguments made
14 therein. Like the Petitioners, the Controller concludes that the Governor is without authority to
15 unilaterally furlough state employees. Therefore, this office has no intention of implementing
16 the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a
17 court of law.

18
19 **STATEMENT OF FACTS**

20 In the interests of brevity and judicial economy the Controller's Office incorporates by
21 reference the statements of fact found in all previously filed pleadings in these cases.
22

23 **LAW & ARGUMENT**

24 I. A DEMURRER IN THIS CASE IS INAPPROPRIATE SINCE THE CORE ISSUE IS THE
25 AUTHORITY OF THE GOVERNOR TO ORDER THE FURLOUGH, NOT THE PROCESS
26 OF COLLECTIVE BARGAGING OR OTHER DILLS ACT ISSUES.
27
28

1 Respondents attempt to frame the argument in the context of a Dills Act issue, by citing
2 Government Code¹ section 3516.5, as authority for the Governor's executive order. However,
3 the real question in this case is whether the Governor actually has the authority to impose a
4 furlough on state employees. Review of Section 3516.5 reveals its inapplicability to the case at
5 hand. Section 3516.5 is only a procedural section, which simply permits the employer (the
6 Governor) to meet and confer *after* the adoption of a law, rule, resolution, or regulation in cases
7 of emergency, rather than *before*. However, this section does not grant the Governor the
8 authority to take any specific action or contravene the authority or intent of the Legislature (as
9 reflected in Sections 19826(b), 19851, and 19852). It is clear that Section 3516.5 does not
10 provide the Governor the authority to impose a furlough on state employees, or to take any
11 other action not already provided for in law. Therefore, the question pending before this court
12 is whether or not the Governor has the authority to impose the furlough. And over this question
13 this court unquestionably has jurisdiction.

14 When we look at Sections 19826(b), 19851 and 19852, it becomes clear that not only
15 does the Governor not have affirmative authority to furlough, but there is also an explicit
16 statutory prohibition against such action. Section 19826(b) prohibits Respondent Department of
17 Personnel Administration from establishing, adjusting, or recommending a salary for
18 represented employees. Sections 19851 and 19852 establish the forty hour work week for all
19 state employees, providing for the possibility of a 4 day, forty hour week. None of these
20 sections evinces an intent on the part of the Legislature to relinquish their ultimate authority
21 over the wages of state employees. *Lowe v. Resources Agency* (1991) 1 Cal.App.4th 1140,
22 1151. The determination of the meaning of Sections 19826(b), 19851, and 19852, is one of
23 statutory interpretation. This process is handled on a regular basis by trial courts in this state;
24 no special administrative expertise is required, nor of any benefit, in this case.

25 Respondents' in their Demurrer attempt to argue that Section 19826(b) [and presumably
26 19851 and 19852] is rendered inoperative, or superceded, by the fact that an MOU is effective
27

28 ¹ All further statutory references shall be to the Government Code unless otherwise indicated.

1 under Section 3517.8(a). However, such an argument misapprehends the effect of Section
2 3517.6 on existing statutes. That section specifically provides that the enumerated statutory
3 provisions are only superceded when the MOU and the statute are in *conflict*. In this case, the
4 Respondent has neither alleged nor demonstrated that any provision of the MOU is in conflict
5 with Section 19826(b). Therefore, the provisions of Section 19826(b) are in full force and
6 effect, prohibiting the Governor from altering the salaries of represented employees, and
7 presenting an issue of law that is appropriately before this court.

8
9 **II. RESPONDENTS' EXHAUSTION OF ADMINISTRATIVE REMEDIES ARGUMENTS**
10 **CONVENIENTLY IGNORE THE PRESENCE OF SUPERVISORY EMPLOYEES AMONG**
11 **THE PETITIONERS, WHO ARE EXCEPTED FROM THE DILLS ACT.**

12 Demurrer is also inappropriate because the Public Employees Relations Board (PERB)
13 does not have jurisdiction over all of the Petitioners. Petitioners Professional Engineers In
14 California Government (PECG) and California Association Of Professional Scientists (CAPS)
15 are supervisory employee organizations pursuant to Section 3527(c), as well as duly certified
16 exclusive collective bargaining representatives for represented employees, pursuant to Section
17 3520.5. [See Petition of PECG and CAPS at ¶¶ 1 and 2.] In the former capacity they represent
18 supervisory employees, who are excepted from the Dills Act, and thus not subject to the
19 jurisdiction of PERB. [See Sections 3513(c), 3527(b), and 3531.] These supervisory employees
20 provide an independent basis for jurisdiction for this court, rendering the Respondents arguments
21 concerning the application of the doctrine of exhaustion of administrative remedies as to
22 represented employees, moot. Therefore, those supervisory employees are properly before this
23 court and demurrer would be inappropriate.

24 **III. DEMURRER WOULD BE INAPPROPRIATE BECAUSE THERE REMAIN**
25 **OUTSTANDING ISSUES BETWEEN THE CONTROLLER AND RESPONDENDTS,**
26 **WHICH ARE NOT WITHIN THE JURISDICTION OF PERB.**

27 A dismissal upon demurrer is only appropriate when it resolves all outstanding issues
28 before the parties. However, the Respondents' demurrer does not resolve the issues between the
Respondents and the Controller. The Controller is a constitutional officer, and as such is not
under the direct authority of the Governor. *McCauley v. Brooks* (1860) 16 Cal. 11. The

1 Controller has independent duties as provided for in both the Constitution and in statute. In
2 carrying out those duties, the Controller has the authority to determine whether a decision made
3 by an agency, which impinges on the operations of the Controller, is within the fundamental
4 jurisdiction of that agency. *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1333. After review
5 of the Governor's Executive Order (S-16-08), the Controller has come to the conclusion that it
6 is not within the fundamental jurisdiction of either the Governor or DPA to unilaterally furlough
7 state employees. This is because the ultimate authority over salaries is placed in the legislature,
8 and "DPA can act only to the extent and in a manner consistent with the legislative delegation
9 of authority." *Id* at 1323. And neither the Governor nor DPA has been able to cite a delegation
10 of authority that supports such action. Therefore, the Controller has no intention of
11 implementing the Governor's furlough plan, absent a ruling to the contrary from a court of law.
12 PERB has no jurisdiction over the Controller and therefore cannot provide any resolution of this
13 outstanding conflict.

14 Although the Controller has been nominally named as a Respondent/Defendant, his
15 interests are more closely aligned with the Petitioners', as noted above. But for the short
16 timeframe, the Controller would have filed a formal motion to realign the parties, seeking to be
17 redesignated as a Petitioner/ Plaintiff. Given the practical opposition of the Controller and the
18 Respondents, and the lack of jurisdiction by PERB over the Controller, it is appropriate for this
19 court to retain jurisdiction over this matter to resolve the outstanding issues.

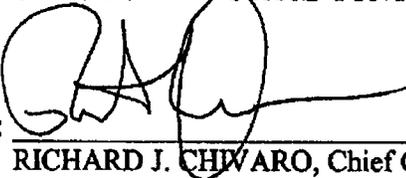
20 CONCLUSION

21
22 The issues presented by the petitions are predominately related to the authority of the
23 Governor to impose the furlough he seeks, not the Dills Act. Since any Dills Act issues are
24 nominal at best, and there are parties who are not subject to the jurisdiction of PERB,
25 jurisdiction of the case should be retained by this court, and the demurrer denied.
26
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1 Dated: January 20, 2009

2 OFFICE OF THE STATE CONTROLLER

3
4
5 By:



6 RICHARD J. CHIVARO, Chief Counsel
7 Attorney for Respondent/Defendant
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FILED/ENDORSED
JAN 20 2009
By: L. Whitfield
Deputy Clerk

8 Attorneys for Respondent/Defendant CALIFORNIA STATE CONTROLLER
9 JOHN CHIANG

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SACRAMENTO**

14 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
15 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

16 Petitioners/Plaintiffs,

17 vs.

18 ARNOLD SCHWARZENEGGER, Governor,
19 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
20 STATE CONTROLLER JOHN CHIANG; and
DOES 1 THROUGH 20, INCLUSIVE,

21 Respondents/Defendants.
22

Case No. 34-2008-80000126

**PROOF OF SERVICE BY FIRST
CLASS MAIL AND ELECTRONIC
DELIVERY**

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Exempted from Fees (Govt. Code § 6103)

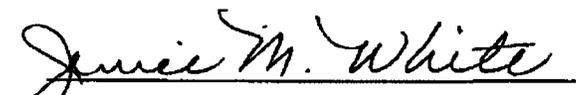
24 I am a citizen of the United States and a resident of the County of Butte, California. I
25 am over the age of eighteen (18) years and not a party to the above-entitled action. My business
26 address is 300 Capitol Mall, Suite 1850, Sacramento, CA 95814.

27 On January 20, 2009 I served the following document:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Proof of Service was executed on January 20, 2009.


Janice M. White

1 GERALD JAMES - State Bar #179258
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7 PROFESSIONAL ENGINEERS IN CALIFORNIA
8 GOVERNMENT and CALIFORNIA ASSOCIATION
9 OF PROFESSIONAL SCIENTISTS

FILED/ENDORSED
JAN 22 2009
By: L. Whitfield
Deputy Clerk

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SACRAMENTO

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
14 CALIFORNIA ASSOCIATION OF
15 PROFESSIONAL SCIENTISTS

16 Petitioners/Plaintiffs,

17 v.

18 ARNOLD SCHWARZENEGGER, Governor,
19 STATE OF CALIFORNIA; DEPARTMENT
20 OF PERSONNEL ADMINISTRATION;
21 STATE CONTROLLER JOHN CHIANG; and
22 DOES 1 THROUGH 20, INCLUSIVE

23 Respondents/Defendants.

CASE NO.
34-2008-80000126-CU-WM-GDS

**PETITIONERS PECG AND CAPS'
REPLY TO RESPONDENT ARNOLD
SCHWARZENEGGER AND DPA'S
OPPOSITION TO PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Date: January 29, 2009
Time: 9:00 a.m.
Dept: 19

Honorable Patrick Marlette

24
25 (continued)
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27
28

PECG and CAPS Reply to Opposition of Respondents/Defendants to Petition for Writ of Mandate

1 CALIFORNIA ATTORNEYS,
2 ADMINISTRATIVE LAW JUDGES AND
3 HEARING OFFICERS IN STATE
4 EMPLOYMENT,

5 Petitioners/Plaintiffs,

6 v.

7 ARNOLD SCHWARZENEGGER as Governor
8 of the State of California; DAVID GILB as
9 Director of the Department of Personnel
10 Administration; JOHN CHIANG, Controller of
11 the State of California; and DOES 1 through 10,
12 inclusive,

13 Respondents/Defendants.

Related CASE NO.
34-2009-80000134-CU-WM-GDS

11 SERVICE EMPLOYEES INTERNATIONAL
12 UNION, LOCAL 1000,

13 Petitioners/Plaintiffs,

14 v.

15 ARNOLD SCHWARZENEGGER as Governor,
16 State of California, DEPARTMENT OF
17 PERSONNEL ADMINISTRATION; JOHN
18 CHIANG, as State Controller; and DOES 1
19 through 20, inclusive,

20 Respondents/Defendants.

Related CASE NO.
34-2009-80000135-CU-WM-GDS

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PECG and CAPS Reply to Opposition of Respondents/Defendants to Petition for Writ of Mandate

1 the authority of the Governor is one which this Court, not the Public Employment Relations
2 Board (PERB), must resolve. PERB declined to hear the *Greene* case in 1991 when Governor
3 Wilson sought to cut the pay of represented employees. The Governor and DPA have also
4 argued alongside CAPS against PERB's intervention in similar cases. The fact that the State
5 Controller has taken the position that the furlough is illegal without legislative action and that he
6 will not reduce salaries is a clear indication that this case needs a resolution now and there is no
7 basis for deferral to PERB.

8 The Governor notes that the Petitioners fail to address that there is a serious emergency.
9 Petitioners acknowledge that there is a serious state cash flow problem and budget deficit, but
10 these are issues for the Legislature to resolve. If the Governor and DPA want to reduce wages
11 and hours of work for state employees, the Governor needs to either reach agreement to do so in
12 a memorandum of understanding, or proceed to impasse in collective bargaining and then have
13 the Legislature approve the salary reduction and changes in hours of work. As Director of
14 Finance, Michael C. Genest said in his declaration in this case, it is an "immediate legislative
15 solution" that is required. (Declaration of Genest, page 2, line 22.) The lack of a solution
16 between the Governor and the Legislature does not give the Governor the right to violate the law
17 and to bypass not just collective bargaining, but also bypass the Legislature.

18 19 ARGUMENT

20 A. The Governor is Without Authority to Implement a Furlough

21 1. Government Code section 3516.5 is not a source of power

22 The Governor claims that he is authorized here to act unilaterally to cut pay and hours
23 because of the current extreme fiscal crisis. The sole legal authority cited for this broad and
24 erroneous claim is Government Code section 3516.5. On its face, that section merely relates to
25 the procedural aspect of the state employer's obligation to provide notice and opportunity to meet
26 and confer under the state collective bargaining law over the impact of a law, rule, resolution or
27 regulation related to matters within the scope of representation. Section 3516.5 does not provide
28 any authority to "furlough" state employees or otherwise implement a cut to their salaries or

1 hours of work.

2 The Governor cites *Sonoma County Organization etc. Employees v. County of Sonoma*
3 (1991) 1 Cal.App.4th 267 in support of the argument that Section 3516.5 is a source of his
4 “power” for the furloughs and pay cuts. In *Sonoma*, an employee organization under the Meyers-
5 Milias-Brown-Act (MMBA), the bargaining law for local public employees, contended that there
6 was not a true emergency which allowed the county to adopt an ordinance prior to complying
7 with the meet-and-confer provisions of the MMBA. Thus, the issue in *Sonoma* concerns the
8 validity of a legislative declaration of an emergency and the immediate adoption of an ordinance
9 without first going through the “meet-and-confer” obligations of the bargaining law. The
10 declaration of an emergency in *Sonoma* raised only a procedural issue. It did not expand the
11 county’s substantive power to act at all, it simply allowed the county to immediately implement
12 an ordinance that it already had the power to adopt, rather than having to proceed through the
13 meet-and-confer process before implementation. (*Id.* at 273 - 274, citing § 3504.5.)

14 Even though *Sonoma* deals only with procedural issues and whether a declaration of an
15 emergency by the county was valid and does not contain any language regarding substantive
16 authority to act, it is obviously distinguishable because of the nature of the public employer. The
17 action being reviewed in that case was a “legislative enactment” of the county. (*Id.* at 279.) The
18 structure of county government is obviously different than state government. Separation of
19 powers issues between the executive and legislative branches are not present. Here, Petitioners’
20 arguments are that the Governor cannot engage in the legislative act of cutting pay and cutting
21 hours. In the absence of an MOU, the Legislature retains the ultimate authority over wages and
22 hours of work. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317.)

23 The Governor’s opposition at Page 8, jumps directly from the description of the county
24 being excused from the meet-and-confer obligation because of an emergency and then proceeds
25 to the unsupported conclusion that because the Governor has declared there is an emergency, the
26 burden is “shifted to the Petitioners to demonstrate there is not an emergency justifying the
27 Governor’s action.” If the Governor had the authority to take this action and this case were about
28 whether the Governor complied with his bargaining obligation, this citation to *Sonoma* and

1 reliance on 3516.5 might be helpful. This citation and reliance is not helpful in attempting to
2 “justify this action” when the action is an illegal furlough cutting pay and cutting hours which the
3 Governor lacks the authority to implement.

4 **2. The Executive Order is unlawful as it conflicts with existing statutes**

5 Petitioners PECG and CAPS do not dispute that the executive order is a “rule” as alleged
6 by the Governor, but they do contend that the Governor lacks the authority to adopt this
7 executive order which conflicts with current statute. The Governor may not invade the province
8 of the Legislature and is not empowered, by executive order or otherwise, to amend the effect of,
9 or to qualify the operation of existing legislation. (*Lukens v. Nye* (1909) 156 Cal. 498, 503-504.)
10 Here, not only does the Governor have no specific authority to adopt this executive order, but the
11 executive order is actually in direct conflict with existing statute which expressly states the
12 Legislature will retain ultimate authority over salaries (Gov. Code § 19826) and other specified
13 terms and conditions of employment, including hours of work (Gov. Code § 19851, 19852.).

14 The Governor argues that Sections 19826, 19851 and 19852 are superseded by the
15 parties’ MOUs. As argued in opposition to the Governor’s demurrer, Section 19826 is not
16 incorporated into either the Unit 9 (PECG) or Unit 10 (CAPS) MOU. In the absence of
17 conflicting provisions in an MOU, the statutory bar in Section 19826 (b) on DPA adjusting
18 salaries remains in place. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1325; Gov. Code §
19 19826 subd. (b).)

20 Section 19851, which sets the 40 hour work week, is incorporated into the Unit 9 (PECG)
21 and Unit 10 (CAPS) MOUs. In fact, when incorporating the 40 hour work week into the MOUs,
22 the parties use the following language “**Workweek 19851** Sets 40-hour workweek and 8-hour
23 day.” (See Unit 9 MOU at page 80, Exhibit A to Request for Judicial Notice in Support of
24 Demurrer (RFJN) and Unit 10 MOU at page 76, Exhibit B to RFJN.) The Unit 9 MOU also
25 specifically states “the regular work week of full-time Unit 9 employee shall be forty (40) hours.”
26 (Unit 9 MOU at page 57, Exhibit A to RFJN.)

27 Just like section 19826, Section 19851 is supersedable. This means the parties could
28 agree to a provision in an MOU for represented employees which conflicts with the forty hour

1 workweek statute. In the absence of such an agreement, the forty hour workweek can only be
2 altered by the Legislature. The Governor's only discretion is to order that the forty hour
3 workweek be worked in four days instead of five. (Gov. Code § 19852.) Government Code
4 section 19851 states in relevant part that:

5
6 "It is the policy of the state that the workweek of the state employee shall be 40
7 hours, and the workday of state employees eight hours, except that workweeks
and workdays of a different number of hours may be established in order to meet
the varying needs of the different state agencies."

8 Petitioners contend there is not an exception which allows a reduction in overall hours (as
9 evidenced by Section 19852 discussed below), and only a restructuring of when the hours are
10 worked. However, the Governor has failed to comply with the statutory basis for the "exception"
11 he claims is present. There is no indication or evidence that the Governor's proposed reduction
12 in hours is designed to "meet the needs of the different state agencies." His action of cutting the
13 hours of all employees is not consistent with this statute, even assuming it means what the
14 Governor argues it means. The interpretation that this section allows a wholesale reduction in
15 hours must be wrong. If it did provide the Governor with such authority, presumably he could
16 cut the hours of all state workers in half or even to zero? This interpretation ignores Section
17 19852 which limits the Governor's authority to determine when the hours are worked, not how
18 many hours are worked. A state employee's work week is 40 hours a week. Some state
19 employees work that 40 hours in four 10-hour days per week. (*Peters v. State of California*
20 (1987) 188 Cal.App.3d 1421, 1426, citing Gov. Code §§ 19851 and 19852.)

21 Under Government Code section 19849 (a), another supersedable statute, DPA can
22 establish rules governing "hours of work and overtime compensation and the keeping of records
23 related thereto..." The Governor argues this section gives "implied" authority to reduce hours.
24 Any authority under this section must either comply with the statutorily established forty hour
25 workweek or be agreed to in an MOU. Any attempt to reduce hours in a manner inconsistent
26 with the forty hour workweek would be void. An attempt by an administrative agency to
27 exercise control over matters which the Legislature has not seen fit to delegate to it is not
28 authorized by law and in such case the agency's actions can have no force or effect. (*Tirapelle v.*

1 *Davis* (1993) 20 Cal.App.4th 1317, 1335.)

2 As the proposed furlough and reduction in pay and reduction in hours are inconsistent
3 with current statute, DPA lacks the authority to reduce pay or hours and its actions in doing so
4 are unlawful. (*Association for Retarded Citizens-California v. Department of Departmental*
5 *Services* (1985) 38 Cal.3d 384, 391 - 392.) Just as the Governor admitted in his letter to all state
6 workers on November 6, 2008 which included a planned furlough, "All the actions we're
7 proposing must first be approved by the Legislature." (Exhibit A to the Declaration of Toppin
8 filed in support of Petition and Complaint.)

9 **B. The Governor's Attempts to Distinguish the Greene Case are Unavailing**

10 Petitioners PEGC and CAPS contend that the courts have previously rejected DPA's
11 efforts to reduce compensation for represented employees because existing law at Government
12 Code section 19826 expressly and unambiguously precludes the reduction of represented
13 employee wages as the Legislature retains ultimate authority over salaries and state workers'
14 employment conditions. (*Department of Personnel Administration v. Superior Court (Greene)*
15 (1992) 5 Cal.App.4th 155, 181 - 182.)

16 The Governor offers four reasons to distinguish *Greene*, none of which are compelling.
17 First, the Governor claims that unlike *Greene*, here the Governor is not reducing salary ranges
18 and employees will receive the same rate of pay. The Governor does not dispute that state
19 employees monthly salaries will be reduced. If the Governor cannot change salary ranges, what
20 gives him the authority to change pay within those ranges? By long standing practice, the
21 salaries of state employees have been set as ranges, defined by a minimum and maximum. The
22 power to establish and adjust salary ranges includes the authority to adjust salaries within those
23 ranges. (*Tirappelle v. Davis* (1993) 20 Cal.App.4th 1317, 1342.) Section 19826 (b) covers both
24 salary ranges and the adjustment of salaries within those ranges. Further, if an employee is
25 currently at the bottom of the salary range, a nearly ten percent salary decrease in the month will
26 place that employee well under the "salary range" for his or her classification.

27 The Governor claims a furlough is a decrease in salary, just like overtime is an increase in
28 salary. The Governor's argument is that if paying overtime is not barred by Section 19826, then

1 decreasing pay through a furlough should not be barred. This reasoning neglects the crucial fact
2 that overtime is negotiated within the parties' MOUs and, in the absence of an MOU, is also
3 specifically authorized by statute at Government Code sections 19843 and 19844.

4 Second, although the Governor notes that *Greene* was decided before Government Code
5 section 3517.8 was added to the Dills Act, he does not explain why this makes a difference.
6 Clearly, it does not make a difference. In *Greene*, the employer was attempting to implement a
7 pay reduction after bargaining to impasse. That action was deemed to be illegal because the
8 Governor and DPA lacked the authority to implement a pay cut as the Legislature retained
9 authority over wages when the parties were at impasse. Section 3517.8 does nothing to alter the
10 authority of the Governor or the Legislature over salaries and other terms and conditions of
11 employment, it only codified the longstanding tenet of labor relations that the parties maintain
12 the status quo while negotiating for a successor MOU.

13 Third, the Governor claims that the court in *Greene* noted that although DPA could not
14 unilaterally reduce employees' salaries, it found DPA could unilaterally reduce employees'
15 benefits. (Respondents' Opposition at page 21.) It is true that in *Greene* the court allowed the
16 implementation at impasse of a "last, best and final offer" which increased contributions to
17 health premiums for represented employees. Even a cursory reading of *Greene* makes it clear
18 that the reason DPA was able to implement this reduction in benefits was because the Legislature
19 allowed the collective bargaining process to address the issue. In passing the health benefit
20 statute (Gov. Code § 22825.1), the Legislature specifically consigned the parties to the collective
21 bargaining process to determine the health benefit premium contribution rates. The court in
22 *Greene* found the Legislature "intended a complete delegation of authority over the contribution
23 rates to the negotiating parties." (*Id.* at 192.) When the parties reached impasse, there was not a
24 "dormant statute" like those covering wages and hours of work, present to fill the void of the lack
25 of agreement by the parties. Instead, the court found that the Legislature gave up its ultimate
26 authority over the amount of the health contributions. Obviously, it has not done so for wages or
27 hours of work.

28 Fourth, the Governor notes that *Greene* did not involve an executive order in an

1 emergency situation. As argued in this case, Section 3516.5 does not give the Governor the
2 power to do anything more than bypass certain notice and procedural aspects of the bargaining
3 law by delaying meeting and conferring.

4 None of these purported reasons successfully distinguish the controlling aspect of *Greene*.
5 The Legislature retains the "ultimate authority over state employees' wages, hours and working
6 conditions." (*Id.* at 181.) The Governor's role is to negotiate as the state employer (through his
7 DPA) or to retain "veto power over any subsequent wage legislation." (*Id.* at 182.)

8 **C. This Court, not the PERB, has Authority to Resolve This Dispute**

9 PECG and CAPS' Opposition to Respondents' Demurrer address PERB's lack of
10 jurisdiction over this dispute. The question as presented in the Petition is the Governor's
11 authority to issue an executive order cutting pay and hours under Government Code sections
12 19826 and 19851 - statutes not administered by PERB. The constitutionally based separation of
13 powers dispute is separate and distinct from any issue of whether the state violated its collective
14 bargaining obligations under the Ralph C. Dills Act. Even if the court were to find this dispute to
15 be within PERB's jurisdiction, the exhaustion should not be required as the facts are undisputed
16 and there is no need for administrative development of the record, judicial intervention would not
17 interfere with PERB's "expertise" or create problems of judicial economy, and the underlying
18 dispute over authority will ultimately be decided by the courts.

19 State Controller John Chiang has responded to PECG and CAPS' Petition by agreeing
20 that the Governor and the DPA do not have statutory or other vested authority to institute a pay
21 cut or furlough under the Executive Order, and that the State Controller therefore has no
22 authority to reduce salaries as a result of the proposed furlough. (State Controller Chiang's
23 Answer to Petition for Writ of Mandate & Complaint for Injunctive and Declaratory Relief, page
24 5, lines 10 - 15.)

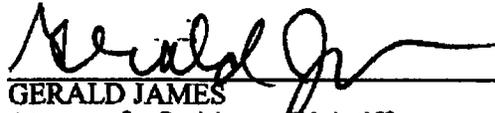
25 If this matter is deferred to PERB, there will be considerable uncertainty over the
26 furloughs and amount of pay employees will receive beginning in February 2009. As Petitioner's
27 believe they will prevail on the merits, having employees stay home, only to receive an award of
28 back pay when the claim is heard, is a liability the state should not accrue.

1 **CONCLUSION**

2 The Governor's proposed furlough and salary reduction of state employed engineers and
3 scientists is unlawful. The claim that the budget situation is dire is not an excuse to circumvent
4 the law. The argument that this furlough action is consistent with the Dills Act under the
5 "authority" given in Section 3516.5 is totally without merit and inimical to the legislatively
6 established collective bargaining process and its goal of promoting harmonious labor relations.
7 Quite simply, the Legislature retains authority over salaries and hours of work and the Governor
8 has no authority to impose furloughs.

9 Petitioners have adequately established the right to a peremptory writ of mandate and
10 declaratory relief commanding the Governor and DPA to comply with their mandatory duties
11 under Article III, section 3 and Article V, section 1 of the California Constitution and
12 Government Code sections 19826 and 19851 and to set aside the portions of the Governor's
13 Executive Order S-16-08 calling for a furlough and salary reduction for state employed engineers
14 and scientists in that the Executive Order is unlawful and illegal. Petitioners have also
15 established that they are entitled to an order commanding State Controller Chiang to ensure that
16 salaries not be reduced as a result of the illegal furlough. State Controller Chiang agrees with
17 this position.

18
19
20 Dated: January 22, 2009


GERALD JAMES
Attorney for Petitioners/Plaintiffs
PECG and CAPS

1 **PROOF OF SERVICE**

2 Professional Engineers in California Government, et al. v. Arnold Schwarzenegger, et al.
3 Sacramento Superior Court Case No. 34-2008-80000126-CU-WM-GDS

4 I declare that I am employed in the County of Sacramento, California. I am over the age
5 of 18 years and not a party to the within entitled cause. The address of my business is 660 J
6 Street, Suite 445, Sacramento, California, 95814.

7 On January 22, 2009, I served the **PETITIONERS PECG AND CAPS' REPLY TO**
8 **RESPONDENT ARNOLD SCHWARZENEGGER AND DPA'S OPPOSITION TO**
9 **PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND**
10 **DECLARATORY RELIEF** on the parties listed below by placing true copies thereof in sealed
11 envelopes with the fees paid and depositing said envelopes with the United Parcel Service for
12 guaranteed next day delivery and by transmitting the documents via e-mail or electronic
13 transmission to the persons at the e-mail addresses listed below:

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15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

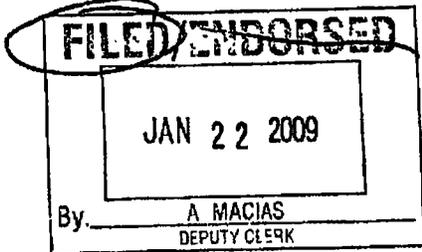
17 Executed on January 22, 2009 at Sacramento, California.

18 
19 GERALD JAMES

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22 DAVID GILB, and DEPT. OF PERSONNEL ADMINISTRATION



23 Exempted from Fees
24 (Gov. Code § 6103)

25 SUPERIOR COURT OF CALIFORNIA
26 COUNTY OF SACRAMENTO

27 PROFESSIONAL ENGINEERS IN
28 CALIFORNIA GOVERNMENT;
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

Respondents/Defendants.

AND RELATED CASES

CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

REPLY TO ALL PETITIONERS'
OPPOSITIONS TO RESPONDENTS'
DEMURRERS TO PETITIONS FOR WRIT OF
MANDATE

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Action Filed: December 22, 2008
Trial Date: None Set

1 I.

2 INTRODUCTION

3 In an effort to obfuscate the arguments raised by Respondents Governor Arnold
4 Schwarzenegger, State of California, David Gilb, and Department of Personnel Administration
5 (“Respondents”) in their demurrers to Petitioners’ petitions for writ of mandate, Petitioners have
6 raised a host of arguments in their oppositions that have nothing whatsoever to do with the
7 jurisdictional impediment that prevents this Court from ruling on the petitions filed in this case.¹
8 Issues such as the unions’ associational rights, supervisors’ rights (or lack thereof), or whether
9 referring this matter to the Public Employment Relations Board (“PERB”) will cause delay in
10 resolving this issues in this action have nothing to do with the straightforward jurisdictional
11 argument that Respondents have placed before this Court for resolution.

12 This Court lacks the jurisdiction to rule on Petitioners’ challenges to Governor
13 Schwarzenegger’s December 19, 2008 Executive Order (“Executive Order”) establishing two-day
14 a month furloughs for state employees based on the following points:

- 15 • Petitioners’ claim that the Governor has exceeded his authority in issuing the
16 Executive Order depends entirely upon their erroneous contention that Government
17 Code section 19826(b) applies to the present situation. PEEG and CAPS, by way of
18 example, admit this very point in stating at p. 3 of their opposition, “[this case]
19 concerns the authority of the Governor in issuing an executive order ... and whether
20 Government Code section 19826 prevents the Governor from taking this action.”
- 21 • In support of their position, Petitioners make a generalized “separation of powers”
22 argument. The separation of powers argument, however, has no independent validity
23 without section 19826(b). In other words, there is no separation of powers standard on
24

25 ¹ Respondent State Controller John Chiang also filed an opposition to the Respondents’ demurrers. The
26 Controller, however, has no standing to oppose Respondents’ demurrers because those demurrers do not
27 challenge any pleading filed by the Controller in this action. Furthermore, the Controller’s argument in its
28 opposition that Respondents’ demurrers should not be sustained because there are outstanding issues
between the Controller and Respondents over the furloughs is specious. Even assuming such issues do
exist, they have not been raised in this action and the Controller cannot raise hypothetical, but unasserted,
claims as a basis for opposing Respondents’ demurrers. Accordingly, the Controller’s opposition to
Respondents’ demurrer should be disregarded by this Court.

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which Petitioners can rely under the circumstances of this case outside of their exclusive reliance upon section 19826(b). Thus, Petitioners' claims are entirely dependent on that code section operating as the standard defining the respective rights of the parties arising out of, or related to, the Executive Order.

- It is undisputed that the wages, hours, and other terms and conditions of employment for those employees represented by Petitioners are governed by existing, albeit expired, MOUs. (Gov. Code. § 3517(a).) PECG and CAPS argue in their opposition that this fact is "of no import." To the contrary, the existence of MOUs between the parties is of paramount import because those MOUs serve to (1) define the labor relations of the parties and (2) trigger the suppression aspects of the Ralph C. Dills Act ("Dills Act"), Government Code section 3512, *et seq*
- Because the labor relations between the parties are governed by MOUs, Government Code section 3517.8(a) provides that "the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, *including, but not limited to, all provisions that supersede existing law, ...*" (Emphasis added.)
- The Dills Act is a "supersession" statute that operates to suppress enumerated statutes, including section 19826(b), when the parties have an MOU the provisions of which conflict with those statutes. (Gov. Code § 3517.6; *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal.App.4th 155, 174-175; *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1325.)
- Provisions of the MOUs between the parties conflict with section 19826 and, therefore, that code section is "suppressed" and has no legal force and effect in defining the respective rights of the parties. Petitioners argue that section 19826 does not conflict with their MOUs. As the discussion below will demonstrate, however, those MOUs do conflict with Petitioners proffered application of section 19826(b) to this case both generally and specifically.
- Since Petitioners cannot rely on section 19826, their only cognizable claims are that Respondents violated the terms of the parties' MOUs or that Respondents bargained in

1 bad faith by not noticing Petitioners in advance and meeting and conferring with them
2 over the furloughs. Either or both claims fall within the ambit of the Dills Act. (Gov.
3 Code, §§ 3516.5, 3517.)

- 4 • PERB possesses exclusive, initial jurisdiction over the administration of the Dills Act.
5 (Gov. Code, § 3514.5.) Accordingly, this Court lacks subject matter jurisdiction over
6 this case and the matter must be referred to PERB.

7 Based upon the above arguments, as well as on the separate argument, as more
8 fully developed below, that Petitioners' claims under the federal Fair Labor Standards Act
9 ("FLSA"), 29 U.S.C. section 201, *et seq.* are premature, Respondents respectfully request that this
10 Court sustain their demurrers to the petitions for writ of mandate without leave to amend.

11 **II.**
12 **ANALYSIS**

13 **A. Section 19826 Is Suppressed and, Therefore, Is Inapplicable Here Because it**
14 **Conflicts with Provisions of the Parties' MOUs.**

15 Petitioners argue that section 19826 is suppressed by the parties' MOUs only if
16 that statute "is in conflict with the provisions of the [MOU]." (Gov. Code § 3517.6.)² Petitioners
17 further argue their MOUs with the State do not conflict with section 19826. For instance,
18 Petitioner CASE argues that "[t]he CASE MOU does not expressly refer to section 19826.
19 However, neither does it contain any provision which conflicts with section 19826." (CASE
20 Opposition, 3:18-19.) The other Petitioners make similar arguments. Petitioners' contention that
21 their MOUs do not conflict with section 19826, however, is untrue. Specific provisions of
22 Petitioners' MOUs conflict with section 19826(b). In addition, the MOUs generally conflict with
23 section 19826(b) in that the MOUs regulate the wage, hours, and working conditions of
24 Petitioners' members.

25
26
27 ² As further support for this argument, Petitioners also rely upon section 19826(d), which provides in
28 relevant part: "If the provisions of this section are in conflict with the provisions of a memorandum of
understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be
controlling .."

1 By way of example, a specific conflict between section 19826(b) and provisions in
2 the MOUs can be found at section 3.1.B of the CASE MOU, entitled "State Rights," which
3 provides that the State retains "the exclusive right to ... schedule, ... *relieve its employees from*
4 *duty because of lack of work, lack of funds, or other legitimate reasons, ... [and] take all*
5 *necessary steps to carry out its mission in an emergency...."* (Emphasis added.)³ Petitioners'
6 argument here is that section 19826(b) constitutes a blanket prohibition on the Governor from
7 issuing the type of furlough order at issue in this case. Such an application of section 19826(b) is
8 in direct conflict with the above-quoted language in the CASE MOU granting the State authority
9 to take measures in times of emergency such as ordering the furloughs in question.

10 The CASE MOU further provides at section 10.3, "Alternative to Layoffs," that
11 "[t]he State may propose to reduce the number of hours an employee works as an alternative to
12 layoff. Prior to the implementation of this alternative to a layoff, the State will notify and meet
13 and confer with the Union to seek concurrence of the usage of this alternative." This provision
14 unquestionably contemplates the ability of the State to adopt alternatives, such as furloughs, in
15 lieu of layoffs, and merely imposes a bargaining standard on the State before doing so. Once
16 again, such a provision "conflicts" with Petitioners' proffered interpretation and application of
17 section 19826(b). As a result, that code section is suppressed by the parties' MOUs under the
18 terms of the Dills Act and is, therefore, inapplicable here. This provision also reinforces
19 Respondents' point that the present dispute is really about bargaining conduct and, therefore, falls
20 squarely within PERB's exclusive jurisdiction.

21 Similar provisions are found in the other Petitioners' MOUs. For instance, the
22 CAPS MOU at section 12.1, "State Rights," grants the State the right "to take all necessary action
23 to carry out its mission in emergencies." Article 4 of SEIU Unit 1's MOU, "State's Rights,"
24 provides that the State may "take all necessary actions to carry out its mission in emergencies."⁴

25
26 ³ This Court has been asked to take judicial notice of the parties' MOU. None of the Petitioners have
27 objected to this request. CASE, in fact, states in its opposition, "Petitioner has no opposition to this
request." (CASE Opposition, 3:13.)

28 ⁴ It is important to keep in mind that the Executive Order in question was issued pursuant to the
emergency provisions of the Dills Act, Government Code section 3516.5.

1 Furthermore, section 19.1.B of the SEIU MOU, "Hours of Work," states that "[w]orkweeks and
2 work shifts of different numbers of hours may be established by the employer in order to meet
3 varying needs of the State agencies." In light of the authority granted the State under Article 4 to
4 "take all necessary actions to carry out its mission in emergencies," the ability to set schedules to
5 meet the varying needs of the State agencies supports the State's the ability to furlough
6 employees. At the very least, there is a conflict between the rights granted the State under the
7 MOU and the prohibition contained in section 19826(b) as Petitioners seek to apply it here.

8 In addition to these specific sections of the parties' MOUs that conflict with
9 Petitioners' attempted application of section 19826 to the Governor's furlough order, it is
10 undeniable that all of the MOUs establish the salaries, hours, and other terms and conditions of
11 employment for Petitioners' members. The plain language of section 19826(b) provides that the
12 State employer may not "establish, adjust, or recommend a salary range for any employees in an
13 appropriate unit where an employee organization has been chosen as the exclusive representative
14 pursuant to Section 3520.5." Thus, *any* MOU provision or bargaining proposal offered in
15 negotiations for a successor MOU that purports to "establish, adjust, or recommend a salary
16 range" for represented employees is by definition in conflict with section 19826(b) thereby
17 suppressing that code section and rendering it inoperative in terms of establishing the rights of the
18 parties. The bottom line is that the MOUs between the parties control and define their
19 relationship. This means that any objections Petitioners have to the Executive Order are limited
20 to claims it violates the terms of their MOU or that the State did not bargain over it. Either way,
21 this is a matter for PERB to decide because these are issues that fall within its exclusive
22 jurisdiction.

23 **B. In Light of the Suppression of Section 19826, Petitioners' Only Cognizable Claims**
24 **Fall Squarely Within PERB's Exclusive Jurisdiction.**

25 Government Code section 3514.5 vests PERB with exclusive initial jurisdiction
26 regarding any conduct that may constitute an unfair labor practice. Where there is any claim that
27 "arguably constitutes an unfair labor practice, the courts have deferred the claim to the
28 administrative tribunal." (*California Teachers Association v Livingston Unified School District*

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- 5 -

1 (1990) 219 Cal.App.3d 1503, 1510; see also, *Anderson v California Faculty Assn* (1994) 25
2 Cal.App.4th 207, 210.) PERB is an expert, quasi-judicial administrative agency tasked with the
3 specialized and focused purpose of protecting both employees and the state employer from
4 violations of organizational and collective bargaining rights. (*California Teachers Assn. v. Public*
5 *Employment Relations Board* (2009) 2009 WL 19131.) As such, PERB is one of those agencies
6 presumably equipped or informed by experience to deal with a specialized field of knowledge,
7 whose findings within that field carry the authority of an expertness which courts do not possess
8 and therefore must respect. (*Id.* Internal citations omitted.)

9 As already discussed above, the respective rights of the parties are defined by their
10 MOUs. As a result, section 19826(b), the code section on which Petitioners' claims are entirely
11 dependent, is suppressed pursuant to the terms of the Dills Act (Gov. Code § 3517.6 and
12 3517.8(a)) and inapplicable here. Any dispute Petitioners have regarding the Governor's
13 Executive Order involve claims that either the furloughs violate the parties' MOUs and/or that the
14 State failed to engage in bargaining over the furloughs. Either way, Petitioners' only viable
15 claims involve the very type of "organizational and collective bargaining rights" PERB was
16 created to protect. As a result, those claims fall within PERB's exclusive jurisdiction.

17 Petitioners' arguments that PERB does not have exclusive jurisdiction lack merit.
18 For instance, SEIU argues that PERB's exclusive jurisdiction does not apply to its claims because
19 it is asserting those claims based on its "associational standing" to represent the interests of its
20 individual members. (SEIU Opposition, pp. 4-6.) PERB's exclusive jurisdiction, however,
21 applies to individual union members' claims. Government Code section 3514.5(a), a part of the
22 Dills Act, provides that "[a]ny *employee*, employee organization, or employer shall have the right
23 to file an unfair practice charge ..." (Emphasis added.)

24 Even assuming that individual SEIU members would not have standing to
25 challenge an alleged "unilateral change," to an MOU, *i.e.*, a reduction in work hours resulting
26 from furloughs, as SEIU contends, nonetheless, the suppression of section 19826(b) invalidates
27 Petitioners' separation of powers claims regardless of whether they are brought by Petitioners on
28 their own behalf, brought as a matter of Petitioners' associational standing rights, or whether such

1 claims are brought by individual union members on their own behalf. Because 19826(b) is
2 suppressed by operation of law, that suppression renders section 19826(b) inoperative as to these
3 Petitioners and their members regardless of the capacity in which the claim is brought. SEIU's
4 associational rights in no way impede PERB's exclusive jurisdiction over the claims made here.⁵

5 PECG and CAPS, on the other hand, contend the facts of this case do not meet the
6 "three criteria in assessing the issue of exclusive initial jurisdiction of PERB." (PECG and CAPS
7 Opposition, 2:13-14.) PECG and CAPS claim these three criteria for assessing PERB's
8 jurisdiction are found in *San Diego Teachers Assn v Superior Court* (1979) 24 Cal.3d 1, 7.)
9 Contrary to PECG and CAPS reading of that case, however, the court in *San Diego Teachers*
10 *Assn* states as follows:

11 The exhaustion [of administrative remedies] question was raised
12 but given only scant attention in the trial court. It is extensively
13 briefed here. Three main issues are identified: (1) Could PERB
14 properly determine that the strike was an unfair practice under the
15 EERA? (2) If it made that determination could it furnish relief
equivalent to that which would be provided by a trial court? (3) Did
the Legislature intend that PERB would have exclusive initial
jurisdiction over remedies against strikes that it properly could find
were unfair practices?

16 (*San Diego Teachers Assn, supra*, 24 Cal.3d at 7.) In other words, the *San Diego Teachers Assn*
17 case does *not* establish a three-part test for assessing PERB exclusive jurisdiction. Rather, the
18 parties in that case had briefed to the court three issues for considering the question of exhaustion
19 of administrative remedies, one of which was PERB's exclusive initial jurisdiction.

20 The fact is that the MOUs between the parties operate to suppress section 19826(b)
21 rendering it inoperative in this case. Because of this, Petitioners' only legally cognizable
22 objections to the Executive Order amount to matters falling within PERB's exclusive initial
23 jurisdiction. For this reason, this Court should sustain Respondents' demurrers.

24 ///

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26 ///

27 ⁵ It also is worth noting here that nowhere in SEIU's Petition for Writ of Mandate is it alleged that SEIU is
28 bringing this case in an "associational" capacity. In fact, at ¶ 1 of its Petition, SEIU indicates that its status
in the case is that of a certified exclusive representative under the Dills Act.

1 **C. Petitioners Were Obligated to, But Failed, to Exhaust Their Administrative**
2 **Remedies.**

3 Petitioners argue they are not required to exhaust their administrative remedies
4 because requiring them to do so would create unnecessary delay in resolving the issues raised in
5 their petitions and would cause irreparable harm to their members. (See e.g., CASE Opposition,
6 pp. 6-7.) None of these justifications for avoiding the obligation for exhaustion of administrative
7 remedies are available here.

8 PERB has broad remedial authority to take action and make determinations as
9 necessary to effectuate the policies of the Dills Act. (See, e.g., Gov. Code § 3514.5; *Int'l Fed'n*
10 *of Prof & Tech Eng'r v Bunch* (1995) 40 Cal.App.4th 670, 677.) Included among the remedies
11 parties may seek in PERB proceedings is a request that PERB seek injunctive relief to enjoin
12 conduct that violates the Dills Act. (See PERB Regulation 32450.) Thus, Petitioners cannot
13 argue they are unable to obtain speedy and adequate relief as an excuse for failing to exhaust their
14 administrative remedies.

15 Furthermore, Petitioners will not be subject to irreparable harm if they pursue their
16 administrative remedies. The California Supreme Court addressed the “irreparable injury” issue
17 in *San Diego Teachers Association, supra*. There, the school district argued it should not be
18 required to complete the PERB process because “completion of the administrative proceeding
19 would result in irreparable injury.” (*San Diego Teachers Association, supra*, 24 Cal.3d at p. 13.)
20 The court rejected that argument and found PERB has broad discretion “to withhold as well as
21 pursue” whatever remedies it deems appropriate. (*Id.*) Accordingly, without even attempting to
22 seek relief from PERB, Petitioners cannot claim “irreparable injury” as an excuse for failing to
23 exhaust Petitioners’ administrative remedies with PERB.

24 Finally, Petitioners reliance on *Department of Personnel Administration v*
25 *Superior Court (Greene)* (1992) 5 Cal.App.4th 155 as support for their claim that they are
26 excused from exhausting their administrative remedies is misplaced. In fact, this case is 180
27 degrees from *Greene*. In *Greene*, the State and certain public employee unions had reached
28 impasse and, therefore, their MOU no longer defined their relationship. The State thereupon

1 attempted to reduce the wages of the represented employees. The *Greene* court found that
2 because the parties no longer had an MOU, Government Code section 19826 was in effect. (*Id.* at
3 175.) Because section 19826 was in effect, the court found that the attempted reduction in
4 salaries involved issues of separation of powers between the legislative and executive branches,
5 which the court determined were “better suited for determination by the courts.” (*Id.* at 169.)
6 Here, on the other hand, the parties’ relationship continues to be governed by their MOUs; section
7 19826 is suppressed and inoperative; and there is no analogous separation of powers issue
8 available to Petitioners. *Greene* is inapposite to this case and does not provide support for
9 Petitioners’ claim that their obligation to exhaust administrative remedies is excused.

10 **D. Arguments about Supervisors’ Rights Are Not Relevant to this Action Because**
11 **Supervisors Are Not “Represented Employees” Within the Meaning of Section**
19826(b) and, Therefore, that Code Section Is Inapplicable to Them.

12 Petitioners (and the Controller) argue that Respondents’ demurrers cannot be
13 sustained because Respondents have not accounted for the impact of furloughs on supervisors in
14 their arguments. This is an irrelevant argument. On its face, section 19826(b) only applies to
15 employees who are represented by “an employee organization [that] has been chosen as the
16 exclusive representative pursuant to [Government Code] Section 3520.5.” The Dills Act
17 specifically excludes “supervisory employees” from its definition of state employees entitled to
18 representation by an exclusive representative. (See Gov. Code § 3513(c).) In other words,
19 supervisors are *unrepresented* employees and, as to those employees, section 19826(a), *not*
20 19826(b), governs the ability of the state employer to impact salary ranges. Section 19826(a)
21 gives the state employer unqualified discretion to reduce or otherwise impact the wages of
22 unrepresented state employees such as supervisors. Thus, Petitioners attempt to interject
23 supervisory personnel into the present dispute appears to be an effort to obfuscate the issues in
24 this case.

25 **E. Petitioners’ FLSA Claims Are Not Justiciable Because They Are Hypothetical and**
26 **Speculative.**

27 Finally, Petitioners contend that their FLSA claims are justiciable because this
28 Court must accept as true their allegations that the State will violate the overtime rights of state

1 employees in the future. (See e.g., SEIU Opposition, 12:19-21; CASE Opposition, p. 8.)
2 Contrary to Petitioners' assertion, the decision in *Younger v. Superior Court of Sacramento*
3 *County* (1978) 21 Cal.3d 102, 119, is directly on point. The *Younger* court found that a request
4 from the Attorney General to declare a statute unconstitutional was not ripe and therefore not
5 justiciable because, "no party to any of these proceedings shows that any public agency presently
6 refuses, to his detriment, to obey the terms of that statute." (*Id.*) Similarly here, Petitioners have
7 not, and cannot, allege facts showing that the State will refuse to honor its legal obligations to pay
8 overtime wages when they are owed. Respondents' demurrers to Petitioners' FLSA cause of
9 action should be sustained.

10 **III.**

11 **CONCLUSION**

12 Based upon the foregoing, Respondents submit that Petitioners' claims fall within
13 PERB's exclusive jurisdiction. Section 19826(b), on which the entirety of Petitioners' claims is
14 based, is suppressed by the parties' MOUs and by operation of the Dills Act and is, therefore,
15 inoperative in defining the respective rights of the parties. Petitioners' only legally cognizable
16 claims arise from the parties' MOUs and/or the parties' respective obligations to bargain over the
17 Governor's furlough orders, matters within PERB's exclusive jurisdiction. In addition,
18 Petitioners' FLSA claims are not ripe. For these reasons, Respondents' demurrers should be
19 sustained.

20
21 Dated: January 22, 2009

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Law Corporation

22
23
24 By: 

David W. Tyra
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DAVID GILB and
DEPARTMENT OF PERSONNEL
ADMINISTRATION

1 **PROOF OF SERVICE**

2 I, May Marlowe, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 22, 2009, I served a
6 copy of the following document(s):

7 **REPLY TO ALL PETITIONERS' OPPOSITIONS TO RESPONDENTS'
8 DEMURRERS TO PETITIONS FOR WRIT OF MANDATE**

- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set
10 forth below on this date before 5:00 p.m.
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, the United States mail at Sacramento, California addressed as set
13 forth below.
- 14 by placing the document(s) listed above in a sealed Federal Express envelope and
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16 Express agent for delivery.
- 17 by transmitting via e-mail or electronic transmission the document(s) listed above
18 to the person(s) at the e-mail address(es) set forth below.

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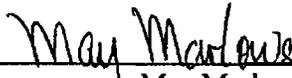
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

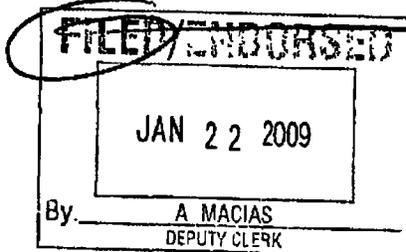
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 22, 2009, at Sacramento, California.



May Marlowe

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
11 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

12 Petitioners/Plaintiffs,

13 v.

14 ARNOLD SCHWARZENEGGER, Governor;
15 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
16 STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

17 Respondents/Defendants.
18
19

Case No. 34-2008-80000126-CU-WM-GDS
(and all related cases)

**DECLARATION OF TAMI R. BOGERT
REGARDING PUBLIC EMPLOYMENT
RELATIONS BOARD'S EXCLUSIVE
INITIAL JURISDICTION AND FILED
UNFAIR PRACTICE CHARGES
CONCERNING THE STATE'S
FURLOUGH PLAN**

Date:
Time:
Dept.: 19
Judge: Hon. Patrick Marlette

**Exempt from Fees
(Gov. Code, § 6103)**

20 I, TAMI R. BOGERT, declare:

21 1. I am the General Counsel for the Public Employment Relations Board (PERB or
22 Board). As such, I oversee the investigation of all unfair practice charges and requests for injunctive
23 relief filed with PERB.

24 2. In 1975, the California Legislature enacted the Educational Employment Relations
25 Act (EERA) (Government Code sections 3540 et seq.). EERA served to establish collective
26 bargaining in California's public schools (K-12) and community colleges. EERA also served to
27 create the Board referred to by the California Supreme Court as an "expert, quasi-judicial
28 administrative agency modeled after the National Labor Relations Board." (*Pacific Legal*

DECLARATION OF TAMI R. BOGERT REGARDING PERB'S EXCLUSIVE INITIAL JURISDICTION AND
FILED UNFAIR PRACTICE CHARGES CONCERNING THE STATE'S FURLOUGH PLAN

1 *Foundation v. Brown* (1981) 29 Cal.3d 168.)

2 3. In 1978, the California Legislature enacted the State Employer-Employee Relations
3 Act, known today as the Ralph C. Dills Act (Dills Act) (Government Code section 3512 et seq.).
4 The Dills Act served to establish collective bargaining for State government employees.

5 4. Section 3514.5 of the Dills Act vests with PERB not only the power and duty to
6 investigate unfair practice charges but also exclusive initial jurisdiction to determine whether
7 charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the
8 purposes of the Dills Act.

9 5. In vesting PERB with exclusive initial jurisdiction over all potential violations of
10 the statutes administered by PERB, the Legislature expressly stated in the Dills Act that the
11 Board's power and duty regarding unfair practice charges includes determining whether the State
12 employer unlawfully refused or failed to meet and confer in good faith with a recognized employee
13 organization. (Gov. Code, § 3519, subd. (c).)

14 6. Where there is any claim that "arguably constitutes an unfair labor practice, the
15 courts have deferred the claim to the administrative tribunal." (*California Teachers Association v.*
16 *Livingston Unified School District* (1990) 219 Cal.App.3d 1503; *Anderson v. California Faculty*
17 *Association* (1994) 25 Cal.App.4th 207.)

18 7. Among PERB's powers is broad remedial authority to take action and make
19 determinations as necessary to effectuate the policies of the Dills Act and other statutes
20 administered by PERB. (See, e.g., Gov. Code, § 3514.5; *Int'l Fed'n of Prof. & Tech. Eng'r v.*
21 *Bunch* (1995) 40 Cal.App.4th 670; *Fresno Unified School District v. National Education Assn.*
22 (1981) 125 Cal.App.3d 259.)

23 8. Also among PERB's powers is the express authority to, upon issuance of a
24 complaint alleging occurrence of an unfair labor practice, petition the court for appropriate
25 temporary relief or restraining order. (Gov. Code, § 3541.3, subd. (j); see Gov. Code, § 3513,
26 subd. (h).)

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DECLARATION OF TAMI R. BOGERT REGARDING PERB'S EXCLUSIVE INITIAL JURISDICTION AND
FILED UNFAIR PRACTICE CHARGES CONCERNING THE STATE'S FURLOUGH PLAN

1 FILED UNFAIR PRACTICE CHARGES CONCERNING THE STATE'S FURLOUGH PLAN

2 9. On or about December 22, 2008, the Service Employees International Union, Local
3 1000 filed with PERB an unfair practice charge against the California "Department of Personnel
4 Administration/Governor Arnold Schwarzenegger" alleging in relevant part that the State violated
5 the Dills Act via its decision to furlough State employees pursuant to Executive Order S-16-08
6 issued by the Governor on December 19, 2008. (PERB Case No. SA-CE-1752-S.)

7 10. On or about December 24, 2008, the Union of American Physicians and Dentists
8 filed with PERB an unfair practice charge against the "State of California, Department of
9 Personnel Administration" alleging in relevant part that the State violated the Dills Act via its
10 decision to furlough State employees pursuant to Executive Order S-16-08. (PERB Case No. SA-
11 CE-1754-S.)

12 11. On or about December 30, 2008, the Stationary Engineers, Local 39, International
13 Union of Operating Engineers, AFL-CIO filed with PERB an unfair practice charge against the
14 "Office of the Governor of the State of California, Dept. of Personnel Administration" alleging in
15 relevant part that the State violated the Dills Act via its decision to furlough State employees
16 pursuant to Executive Order S-16-08. (PERB Case No. SA-CE-1755-S.)

17 12. On or about December 31, 2008, the American Federation of State, County and
18 Municipal Employees filed with PERB an unfair practice charge against the California
19 "Department of Personnel Administration" alleging in relevant part that the State violated the Dills
20 Act via its decision to furlough State employees pursuant to Executive Order S-16-08. (PERB
21 Case No. SA-CE-1756-S.)

22 13. On or about January 9, 2009, the International Union of Operating Engineers, Unit
23 12 filed with PERB an unfair practice charge against the "California Department of Personnel
24 Administration" alleging in relevant part that the State violated the Dills Act via its decision to
25 furlough State employees pursuant to Executive Order S-16-08. (PERB Case No. LA-CE-664-S.)

26 14. Each of the five unfair practice charges referenced above was assigned upon filing
27 with PERB to staff in PERB's Office of the General Counsel; PERB's processing/investigatory
28 stage is underway in all five cases.

DECLARATION OF TAMI R. BOGERT REGARDING PERB'S EXCLUSIVE INITIAL JURISDICTION AND
FILED UNFAIR PRACTICE CHARGES CONCERNING THE STATE'S FURLOUGH PLAN

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I have personal knowledge of the facts set forth herein and if called as a witness could and would testify competently thereto. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 21st day of January 2009 at Sacramento, California.


TAMI R. BOGERT
General Counsel
Public Employment Relations Board

DECLARATION OF TAMI R. BOGERT REGARDING PERB'S EXCLUSIVE INITIAL JURISDICTION AND FILED UNFAIR PRACTICE CHARGES CONCERNING THE STATE'S FURLOUGH PLAN

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE
MINUTE ORDER**

Date: 01/23/2009

Time: 02:51:56 PM

Dept: 19

Judicial Officer Presiding: Judge Patrick Marlette
Clerk: J. Zraggen

Bailiff/Court Attendant: None
ERM: None

Case Init. Date: 12/22/2008

Case No: 34-2008-80000126-CU-WM-GDS Case Title: Professional Engineers In California Government
vs. Arnold Schwarzenegger Governor State of California

Case Category: Civil - Unlimited

Causal Document & Date Filed:

Appearances:

In reviewing the reply papers filed by the parties on January 22, 2009, the Court notes citations therein to specific provisions of the Memoranda of Understanding of the various petitioners in these actions. Respondent has made two separate requests for judicial notice of the Memoranda of Understanding; however, the request made with regard to the PEGC and CAPS MOUs attaches complete copies of the MOUs, while the request made with regard to the CASE and SEIU MOUs only attaches the cover pages and tables of contents of those MOUs. In the interest of having a complete record of the cited provisions of all of the MOUs, the Court directs respondent to file, no later than Monday, January 26, 2009, an amended request for judicial notice that attaches as exhibits, at a minimum, the complete text of all provisions of the CASE and SEIU MOUs that are cited in the briefs previously filed with the Court by any party.

Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

And by FAX

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Patrick Whalen, Esq.
The Law Office of Brooks Ellison
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Sacramento, CA 95814

Date: 01/23/2009

MINUTE ORDER

Page: 1

Dept: 19

Calendar No.:

PEGC JA 000650

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Dated: January 26, 2009
J. Zraggen, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE
MINUTE ORDER**

Date: 01/29/2009

Time: 09:00:00 AM

Dept: 19

Judicial Officer Presiding: Judge Patrick Marlette
Clerk: Ramos, A.

Bailiff/Court Attendant: Munoz, O.

ERM:

Reporter: K Nowack #6987,

Case Init. Date: 12/22/2008

Case No: 34-2008-80000126-CU-WM-GDS Case Title: Professional Engineers In California Government
vs. Arnold Schwarzenegger Governor State of California

Case Category: Civil - Unlimited

Event Type: Petition for Writ of Mandate - Writ of Mandate

Causal Document & Date Filed:

Appearances:

Gerald James, attorney for Petitioner
Will Yamada, attorney for Respondent
David Tyra, attorney for Respondent
Shawn Silva, attorney for Respondent

The following cases were heard in conjunction with one another:

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD
SCHWARZENEGGER, et al., Case No. 2008-80000126;

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE
EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD
SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate
and complaints for declaratory relief in the above-captioned matters:

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold
Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order
directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010,
to adopt a plan to implement a furlough of represented state employees and supervisors for two days
per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state
managers, including exempt state employees.

Date: 01/29/2009

MINUTE ORDER

Page: 1

Dept: 19

Calendar No.:

PECG JA 000652

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134.

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al., Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3rd 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3rd 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 168-169.)

In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it

would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 Greene case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the Greene case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, Department of Personnel Administration v. Superior Court (Greene) (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

Respondents' demurrers are therefore overruled.

Ruling on the Petitions and Complaints:

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis. According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.

This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp. 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.

See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.

See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.

See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and

petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties, and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay

according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PEGC and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs. The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact, employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

See, Title 29, Code of Federal Regulations, section 541.710.

See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.

See, e.g., 29 U.S.C. Section 216.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented, is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation, but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA.

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law." In *Tirapelle v. Davis* (1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the incidental reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

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80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents¹ have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

¹ In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

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Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3rd 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3rd 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 168-169.)

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In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.²

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

² This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

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Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties⁵, and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

⁵ See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

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Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."⁶

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."⁷

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."⁸

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."⁹

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

⁶ See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.

⁷ See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.

⁸ See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.

⁹ See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

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employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented¹³, is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation¹⁴, but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA.

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."¹⁵ In *Tirapelle v. Davis*

¹³ See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.

¹⁴ See, e.g., 29 U.S.C. Section 216.

¹⁵ See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

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(1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

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Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

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CASE NO. : 2008-80000126
CASE TITLE : PEGG; CAPS v.
SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Amended Minute Order

CERTIFICATE OF SERVICE BY MAILING

C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
Sacramento, CA 95814
Brooke D. Pierman, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

J. Felix DeLa Torre, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811
Will M. Yamada
Department of Personnel Administration
Legal Office
1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814

Dated: 1/30/09

Superior Court of California,
County of Sacramento

By: D. RIOS, SR.,
Deputy Clerk

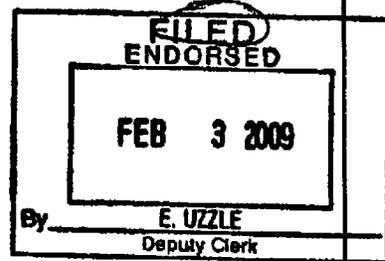
BOOK : 19
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SCHWARZENEGGER

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO**

BY: D. RIOS, SR.,
Deputy Clerk

1 GERALD JAMES - State Bar #179258
660 J Street, Suite 445
2 Sacramento, CA 95814
Telephone: (916) 446-0400
3 Facsimile: (916) 446-0489

4 Attorney for Petitioner/Plaintiff
PROFESSIONAL ENGINEERS IN CALIFORNIA
5 GOVERNMENT



6
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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO
10

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12 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
13 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS
14

15 Petitioners/Plaintiffs,

16 v.

17 ARNOLD SCHWARZENEGGER, Governor,
18 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
19 STATE CONTROLLER JOHN CHIANG; and
DOES 1 THROUGH 20, INCLUSIVE
20

21 Respondents/Defendants.
22
23

CASE NO.
34-2008-80000126-CU-WM-GDS

NOTICE OF APPEAL

24
25
26 To the Clerk of the superior court of the State of California for the County of Sacramento:
27 PLEASE TAKE NOTICE that Petitioner/Plaintiff PROFESSIONAL ENGINEERS IN
28 CALIFORNIA GOVERNMENT hereby appeals from the Court's January 29, 2009 final ruling

1 on the petition for writ of mandate and complaint for declaratory relief, as amended by the court
2 on January 30, 2009, in the above entitled case.

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Dated: February 3, 2009


GERALD JAMES
Attorney for Petitioner/Plaintiff
Professional Engineers in California
Government

1 **PROOF OF SERVICE BY MAIL**

2 I declare that I am employed in the County of Sacramento, California. I am over the age
3 of 18 years and not a party to the within entitled cause. The address of my business is 660 J
4 Street, Suite 445, Sacramento, California, 95814.

5 I am readily familiar with my firm's practice for collection and processing of
6 correspondence for mailing with the United States Postal Service, to wit, that correspondence
7 will be deposited with the United States Postal Service on the same day in the ordinary course of
8 business.

9 On February 3, 2009, I served the **NOTICE OF APPEAL** on the parties listed below by
10 placing it in a sealed envelope for collection and mailing this date, following ordinary business
11 practices:

12 David W. Tyra
13 Kronick, Moscovitz, Tiedemann & Girard
14 400 Capitol Mall, 7th Floor
15 Sacramento, CA 95814
16 Attorney for Respondents Arnold Schwarzenegger and Department of Personnel
17 Administration

18 Will M. Yamada
19 Department of Personnel Administration
20 1515 S Street, North Bldg., Suite 400
21 Sacramento, CA 95811
22 Attorney for Respondent Department of Personnel Administration

23 Richard Chivaro
24 Ronald V. Placet
25 Office of the State Controller
26 300 Capitol Mall, Suite 1850
27 Sacramento, CA 95814
28 Attorneys for Respondent State Controller John Chiang

Gerald James
California Association of Professional Scientists
660 J Street, Suite 445
Sacramento, CA 95814
Attorney for Petitioner California Association of Professional Scientists

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 3, 2009 at Sacramento, California.


Elizabeth Cantu

1 GERALD JAMES - State Bar #179258
2 660 J Street, Suite 445
3 Sacramento, CA 95814
4 Telephone: (916) 446-0400
5 Facsimile: (916) 446-0489

6 Attorney for Petitioner/Plaintiff
7 CALIFORNIA ASSOCIATION OF
8 PROFESSIONAL SCIENTISTS

FILED
ENDORSED
FEB 3 2009
By E. UZZLE
Deputy Clerk

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SACRAMENTO

11
12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
14 CALIFORNIA ASSOCIATION OF
15 PROFESSIONAL SCIENTISTS

CASE NO.
34-2008-80000126-CU-WM-GDS

16 Petitioners/Plaintiffs,

NOTICE OF APPEAL

17 v.

18 ARNOLD SCHWARZENEGGER, Governor,
19 STATE OF CALIFORNIA; DEPARTMENT
20 OF PERSONNEL ADMINISTRATION;
21 STATE CONTROLLER JOHN CHIANG; and
22 DOES 1 THROUGH 20, INCLUSIVE

23 Respondents/Defendants.

24
25
26 To the Clerk of the superior court of the State of California for the County of Sacramento:
27 PLEASE TAKE NOTICE that Petitioner/Plaintiff CALIFORNIA ASSOCIATION OF
28 PROFESSIONAL SCIENTISTS hereby appeals from the Court's January 29, 2009 final ruling

1 on the petition for writ of mandate and complaint for declaratory relief, as amended by the court
2 on January 30, 2009, in the above entitled case.

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Dated: February 3, 2009


GERALD JAMES
Attorney for Petitioner/Plaintiff
California Association of Professional
Scientists

1 **PROOF OF SERVICE BY MAIL**

2 I declare that I am employed in the County of Sacramento, California. I am over the age
3 of 18 years and not a party to the within entitled cause. The address of my business is 660 J
4 Street, Suite 445, Sacramento, California, 95814.

5 I am readily familiar with my firm's practice for collection and processing of
6 correspondence for mailing with the United States Postal Service, to wit, that correspondence
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8 business.

9 On February 3, 2009, I served the **NOTICE OF APPEAL** on the parties listed below by
10 placing it in a sealed envelope for collection and mailing this date, following ordinary business
11 practices:

12 David W. Tyra
13 Kronick, Moscovitz, Tiedemann & Girard
14 400 Capitol Mall, 7th Floor
15 Sacramento, CA 95814
16 Attorney for Respondents Arnold Schwarzenegger and Department of Personnel
17 Administration

18 Will M. Yamada
19 Department of Personnel Administration
20 1515 S Street, North Bldg., Suite 400
21 Sacramento, CA 95811
22 Attorney for Respondent Department of Personnel Administration

23 Richard Chivaro
24 Ronald V. Placet
25 Office of the State Controller
26 300 Capitol Mall, Suite 1850
27 Sacramento, CA 95814
28 Attorneys for Respondent State Controller John Chiang

Gerald James
Professional Engineers in California Government
660 J Street, Suite 445
Sacramento, CA 95814
Attorney for Petitioner Professional Engineers in California Government

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 3, 2009 at Sacramento, California.


Elizabeth Cantu

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On August 31, 2009, I served a true copy of the following document(s):

**Joint Appendix
Volume III of IV [Pages 476 Through 678]**

on the following party(ies) in said action:

Gerald A. James Professional Engineers in California Government 455 Capitol Mall, Suite 501 Sacramento, CA 95814-4433 Phone: (916) 446-0400 Fax: (916) 446-0489	<i>Attorneys for Appellants Professional Engineers in California Government, et al.</i>
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David W. Tyra Kronick, Moskovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 Phone: (916) 321-4500 Fax: (916) 321-4555	<i>Attorneys for Respondents Governor Arnold Schwarzenegger and Department of Personnel Administration</i>
--	--

Will M. Yamada Chief Counsel Department of Personnel Administration 1515 "S" Street, Suite 400 Sacramento, CA 95811-7246 Phone: (916) 324-0512 Fax: (916) 323-4723	<i>Attorneys for Respondent Department of Personnel Administration</i>
---	--

Richard Chivaro
State Controller's Office
Chief Counsel
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Phone: (916) 445-6854
Fax: (916) 322-1220

*Attorneys for Appellant State Controller
John Chiang*

- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.
- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
- BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.
- BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 31, 2009, in San Leandro, California.



Maria E. Mora